United States Court of Appeals

for the Second Circuit

APPENDIX

76-7217

In The

United States Court of Appeals

For The Second Circuit

COMMERCE TANKERS CORPORATION,

Defendant-Counterclaimant-Appellant,

and

VANTAGE STEAMSHIP CORPORATION,

Intervening Defendant-Appellant,

vs.

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,

Plaintiff-Appellee.

(Cont'd)

JOINT APPENDIX

Volume II, pp. 301a-600a

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VANTAGE STEAMSHIP CORPORATION,

Plaintiff-Appellant,

vs.

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,

Defendant-Appellee.

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Commerce the sum of Seven Hundred Thousand Dollars ($700,000) in full satisfaction of the judgment which Commerce had obtained against Vantage. It was further agreed that the judgment was to be satisfied and that all the other claims in the pending litigation, both in the State Court and in this Court, between Commerce and Vantage were to be terminated, with each reserving whatever claims they might have against the NMU. The Satisfaction of Judgment was filed of record on June 4, 1973 and mutual releases between Commerce and Vantage were executed.

44. The S.S. Barbara was never transferred to Vantage.

45. In April 1972, the S.S. Barbara was sold by Commerce to Plaza Shipping, Inc. for a purchase price of Seven Hundred Thousand Dollars ($700,000).

EXHIBIT A - CONTRACT OF SALE OF THE S.S."BARBARA" ANNEXED TO FOREGOING STIPULATED FINDINGS OF FACT 302a

CONTRACT OF SALE

OF

BEST COPY AVAILABLE

S.S. "BARBARA"

Agreement made in New York, New York this 23rd day of December, 1970 between Commerce Tankers Corporation, a Delaware corporation (hereinafter called the "Seller") and Vantage Steamship Corp, a New York corporation (hereinafter called the "Buyer").

WITNESSETH:

That in consideration of the mutual promises herein contained, the parties hereto agree as follows:

1. The Seller hereby agrees to sell and the Buyer hereby agrees to buy on the terms and conditions hereinafter set forth, the whole of the American steamship "BARBARA" (hereinafter called the "Vessel"), Official Number 248079 of about 15,148 gross and 10,632 net register tons, documented under the flag of the United States of America with full United States coastwise rights and privileges together with all her outfit, equipment, spare parts and gear belonging to her aboard, including six excavators, and ashore, but excepting the Master's slop chest, crew's personal effects and any leased equipment, All broached and unbroached consumable stores, broached and unbroached provisions, fresh water and unused rope remaining aboard the vessel at the time of delivery shall be included in the purchase price. Said Vessel is classed +A1 (E)A1 by American Bureau of Shipping and is to be delivered to the Buyer fully classed free of all outstanding recommendations and notations by American Bureau of Shipping. Seller represents that U.S.C.G. Inspection

Certificate expires February 17, 1972 and that all other certificates are valid. Vessel is to be delivered free of cargo and free of debt with all pumps in operating order.

2. The purchase price is TWO MILLION SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS ($2,750,000) U.S. Currency, payable by Buyer as follows:

a.) Upon the signing of this contract, the sum of $275,000 in U.S. currency by bank cashier's or certified check which shall be deposited in escrow in the joint names of Buyer and Seller with Franklin National Bank, New York, New York. Any escrow expenses to be shared equally by Buyer and Seller.

b.) Upon delivery of the Vessel as hereinafter provided, an additional sum of $2,475,000 in U.S. currency by bank cashier's or certified check to be paid to Seller.

3. Fuel oil shall be paid for by the Buyer at time of delivery at Seller's current contract price at time of delivery.

4. Buyer has accepted the Vessel upon completion of superficial inspection afloat and examination of American Bureau of Shipping records.

5. Prior to delivery, the Seller, if required by the Buyer, shall drydock the Vessel at a U.S. Gulf Port selected by the Buyer for examination of her bottom and other underwater parts, including rudder, propeller and tail-end shaft. All expenses in connection with bringing the vessel to the drydock shall be borne by the Seller. If the bottom or other underwater parts, including rudder, propeller and tail-end shaft, shall be found damaged, the Seller shall make same good to the satisfaction of the classification society's

representative for maintenance of the Vessel's class without any recommendation or qualification. In such case, the expenses in connection with docking and undocking the Vessel, drawing and replacing the tail-end shaft and also drydock dues, including the classification surveyor's fees, shall be borne by the Seller. If no such damage be found, all of the aforementioned expenses shall be borne by the Buyer.

6. Vessel to be delivered gas free at a United States Gulf Port, Buyer to select port, to be same port as place of drydock on or before February 28, 1971.

In the event transfer of title to said Vessel is delayed, for reasons beyond the control of the Seller, or if repairs are made to the Vessel at the place of drydock for Seller's account, so that she is not ready for transfer to the Buyer on or before March 31, 1971, the Buyer shall have the right to cancel this contract, provided written or telegraphic notice of such cancellation is given to the Seller on or before 5:00 p.m. New York time, April 4, 1971.

In the event that the Buyer gives such notice electing to cancel the contract, this contract shall forthwith terminate without liability hereunder of either party to the other, and the escrow deposit referred to in Clause 2(a) hereof shall be released to the Buyer.

In the event the Buyer fails to give such written or telegraphic notice of cancellation on or before 5:00 p.m., New York time, April 4, 1971, this contract shall remain in full force and effect.

7. Within seventy-two hours, Excepting Saturdays, Sundays and holidays, after written or telegraphic notice by the Seller to the Buyer that title to the Vessel is ready for transfer, title will close at office of Taylor, Ferencz & Simon, 60 East 42nd Street, New York, New York, or at such other place as the Parties agree and concurrently with the passing of title in and to the Vessel by the Seller to the Buyer, the Seller shall deliver to the Buyer at such closing or at the port of delivery:

a.) A valid and sufficient Bill of Sale in duplicate transferring title of the Vessel to the Buyer with warranties of title and of freedom from all liens and encumbrances. The warranties therein contained shall survive the delivery of said Bill of Sale and transfer of the Vessel to the Buyer.

b.) The Classification Certificate of the American Bureau of Shipping showing Vessel in class without requirements, recommendations or notations in respect to Vessel's class issued within forty-eight (48) hours of closing by American Bureau of Shipping and with all other certificates valid.

c.) Such instructions in writing to the Master of the Vessel or other person in control thereof as may be necessary to deliver possession to the Buyer at the port of delivery.

d.) Current Certificate of United States Coast Guard of the Vessel's home port showing ownership of said Vessel in the Seller, free and clear of all liens and encumbrances. (CG 1330).

e.) All certificates, plans and drawings relating to the Vessel and all deck and engine rough log books in the possession of the Seller.

f.) An affidavit that the Seller is a citizen of the United States within the meaning of Section 2 of the Shipping Act of 1916, as amended (46 USCA Section 802).

g.) The permanent registry or enrollment of the Vessel or a receipt showing delivery of the same to the United States Coast Guard.

h.) Current valid U.S. Coast Guard Inspection Certificate, with its mid-year inspection passed.

i.) A certified copy of the Resolution of the Board of Directors authorizing the sale and transfer of the said Vessel to the Buyer.

j.) A certified copy of the Resolution of the stockholders of the Seller authorizing the sale and transfer of the said Vessel to the Buyer.

k.) An assignment of insurance in accordance with Clause 10 hereof.

and concurrently, therewith, Buyer at the closing, shall deliver to the Seller:

aa.) An order directing the Escrow Agent to release the Escrow deposit to the Seller.

bb.) A bank cashier's or certified check payable to the Seller's order for $2,475,000, plus a check payable to the Seller's order covering payment for fuel oil in accordance with Clause 3 hereof.

cc.) A certified copy of the Resolution of the Board of Directors of the Buyer authorizing the purchase of the Vessel as herein provided.

dd.) Proof of all necessary stockholders' consent has been obtained or Buyer's counsel's opinion that such consent is not necessary.

ee.) A certificate of Acceptance and Receipt to the effect that said Vessel is accepted and received by Buyer in accordance with and subject to the provisions of this contract of sale.

ff.) An affidavit that Buyer is a citizen of the United States of America within the meaning of Section 2 of the Shipping Act of 1916 as amended (46 USCA Section 802).

8. In the event of actual or constructive total loss of the Vessel before her transfer to the Buyer, this contract shall be null and void and the deposit referred to in Clause 2 (a) hereof shall be returned to the Buyer.

9. If the Seller shall be unable to transfer title of the Vessel or the Buyer shall be unable to accept transfer of the Vessel both in accordance with this contract, due to outbreak of war, restraint of governments, princes or people

of any nation or the United Nations, or act of God or other circumstances beyond the control of either party, then either the Seller or the Buyer may terminate this contract upon written or telegraphic notice from one party to the other without any liability upon either party hereunder and the deposit referred to in Clause 2 (a) hereof shall be returned to the Buyer.

10. Seller agrees to give Buyer an assignment of claims, if any, against its Underwriters or third parties, for damage to the Vessel, if any, attributable to casualties, including crew's negligence, occurring prior to delivery except those claims in connection with damage already repaired by, or for the account of Seller which claims are expressly reserved for Seller.

11. Buyer undertakes to change the Vessel's name, funnel and other markings promptly after transfer of title to the Vessel to the Buyer.

12. Seller and Buyer each for itself represents and warrants that it is a citizen of the United States within the meaning of Section 2 of the Shipping Act of 1916, as amended, 46 U.S. Code, Section 802.

13. The Seller herewith represents and warrants that it will hold the Buyer harmless as to all third party claims of any nature against the Vessel arising out of any matter or thing prior to passing of title. The foregoing obligation of the Seller to hold the Buyer harmless as to

all third party claims hereinabove referred to shall survive the delivery of the Bill of Sale and transfer of the Vessel to the Buyer.

14. If any dispute or difference should arise in connection with this contract, the same shall be referred to a single arbitrator in New York, to be appointed by the parties hereto, but if the parties cannot agree upon a single arbitrator, then they shall each appoint an arbitrator and the two so appointed shall appoint a third arbitrator. The decision of the single arbitrator, or in the event that there are three arbitrators, the decision of any two shall be final and binding upon the parties hereto, and may, for the purpose of this contract, be made a rule of court.

15. This document constitutes the full understanding between the parties, and no statement, oral or written, made prior to or at the signing hereof, shall vary or modify the written terms hereof. No amendment, modification or release from any provision herein shall be effective unless in writing and signed by both parties specifically stating it is an amendment to this contract. This contract shall bind and inure to the benefit of the successors and assigns of the parties hereto respectively, it being agreed that this contract is assignable or transferable by Buyer in whole or in part to a corporation about to be formed except that in the event of any default by such assignee or transferee of Buyer, Buyer shall be obligated to perform the terms and conditions of this Agreement. All notices hereunder shall be

in writing or by telegram and shall be addressed to Buyer at:

Vantage Steamship Corp.
11 Broadway
New York, New York 10004

with a copy to:

Hill, Betts & Nash
26 Broadway
New York, New York 10004

and to Seller at:

Vernitron Corporation
Lake Success Park Community Drive
Great Neck, New York 11021
Attention: Mr. H. Nathanson

with a copy to:

Taylor, Ferencz & Simon
60 East 42nd Street
New York, New York 10017

16. Brokerage commission of 1-1/4 percent of the purchase price of the Vessel only shall be paid by Seller to Blix, Mallory Company, and Buyer hereby agrees to hold Seller harmless and Seller agrees to hold Buyer harmless from any claim by any other broker or other parties that this sale was brought about by such broker or other party.

IN WITNESS WHEREOF, the parties have caused this contract to be executed in their names and by their respective officers or agents thereunto duly authorized, the day and year first above written.

Witness:

COMMERCE TANKERS CORPORATION

By Benjamin H. Sacks
SECRETARY

Witness:

VANTAGE STEAMSHIP CORP.

By

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,

Plaintiffs,

-against- 71 Civ. 582

COMMERCE TANKERS CORP.,

Defendant-Counterclaimant

-against-

VANTAGE STEAMSHIP CORP,

Intervening Defendant.

VANTAGE STEAMSHIP CORP.,

Plaintiff,

-against- : 72 Civ.4619

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,

Defendant.

January 13, 1975
10 a.m.

BEFORE: THOMAS P. GRIESA,

District Judge

APPEARANCES:

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Attorneys for Vantage Steamship Corp.
BY: FRED C. KLEIN, ESQ.,
DONALD F. DEVINE ESQ.,
Of Counsel

- - -

before Arbitrator Kheel and Judge Frankel that they submit that it is not necessary to go into a lengthy trial for rulings of the antitrust issues. What we are saying and what we hope to obtain in this courtroom is a hearing of the evidence with respect to maritime with this. I hope your Honor will be in a position to take the evidence we have to offer, and we should proceed expeditiously.

THE COURT: Go ahead.

MR. COHEN: My first witness is Mr. Benjamin K. Sachs.

B E N J A M I N K. S A C H S, called as a witness, being first duly sworn, testified as follows:

MR. COHEN: Your Honor, if I may, I would like to hand up a marked pleading. Commerce's amended counterclaims.

MR. KLEIN: We will do so tomorrow. We don't have enough copies.

THE COURT: That's all right.

DIRECT EXAMINATION

BY MR. COHEN:

Q Mr. Sachs, are you associated with Vernitron Corporation?

A I am a vice president, secretary and a director of Vernitron Corporation.

Q What do your duties encompass?

A I am responsible for relations with the investment community, with your stockholders for public relations, for instance, and for industrial and labor relations, employees pensions and employees benefits.

Q Are you familiar with Commerce Tankers Corporation?

A Yes.

Q Do you know the connection between Vernitron and Commerce?

A Yes.

Q What is it?

A Commerce is a wholly owned subsidiary of Vernitron.

Q Do you hold any position with Commerce?

A I am the secretary and director of Commerce.

Q Were you a secretary or other officer of Commerce in December of 1970?

A Yes.

Q Did you in December of 1970 have any association with the sale by Commerce of the vessel Thalia?

A Yes.

Q I show you a contract of sale which has been marked as Exhibit 1 for identification relating to the vessel Thalia. I direct your attention to the last page there.

Do you recognize your signature?

A Yes.

Q Did you sign that on or about the date, December 23, 1970?

A Yes.

Q The vessel was sold to a company called Tanker Four Lakes, Inc.

Do you know what purchase price Commerce received for the vessel Thalia?

MR. SOVEL: Objection, your Honor. It's irrelevant.

THE COURT: Overruled.

A Approximately $3,100,000.

Q I direct your attention to paragraph 2 of the contract.

Does that recite the purchase price?

A $3,050,000.

MR. COHEN: I ask this contract be admitted into evidence.

THE COURT: That's Commerce Exhibit 1 for identification?

MR.COHEN: Yes.

THE COURT: Paragraph 17 of the stipulation says that in December of 1970 Commerce arrived at an agreement to

sell the Thalia to Texas City Refining. Is that the company you mentioned?

THE WITNESS: I believe Tanker Four Lakes is a subsidiary of Texas City.

THE COURT: Thank you.

xxx (Commerce Exhibit 1, received in evidence.)

Q On or about the same day, December 23, 1970 , did Commerce own any other vessels?

A Yes.

Q What was the name of any other vessels it owned?

A The Barbara.

Q Was that the sole other vessel it owned?

A Yes.

Q Was it of the same class and type as the Thalia?

A Yes.

Q Did Commerce enter a contract of sale with respect to the Barbara?

A Yes.

Q On or about the same time?

A Yes.

Q Who is the proposed purchaser of the Barbara, if you know?

A I believe it was Vantage Steamship Corp.

Q I show you a contract of sale dated December 23, 1970 between Tankers Corporation to sell and Vantage Steamship Corporation as the buyer. It has been marked as Exhibit 2 for identification. I ask you whether you recognize your signature on the last page thereof.

A Yes.

Q You signed this on the date thereof?

A Yes.

Q Was this contract of sale ever consummated, if you know?

A No, it was not.

THE COURT: This is the same as Exhibit A to the stipulation, isn't it?

MR. COHEN: It is identical.

THE COURT: Let's use Exhibit A.

MR. COHEN: It is marked as 2 for identification and I ask that it be admitted in these proceedings.

MR. KLEIN: No objection on Vantage's part.

MR. SOVEL: No objection, your Honor.

THE COURT: It will be received.

xxx (Commerce Exhibit 2, received in evidence.)

Q Prior to the time that the sale of the vessels Barbara and Thalia had been contracted for, had there, to your knowledge, been any publicity with respect to the anticipated

sale?

A Yes. In October of 1970 the Vernitron board decided to sell the ships as well as certain other parts of the company and at that time we put out a news release in our normal fashion as a public corporation which indicated the operations and assets that we intended to sell.

Q I show you a three-page document marked as Commerce 3 for identification. It is on the letterhead of Freeman P. Mackay, Jr., Financial Public Relations, entitled "Vernitron To Establish Reserve For Divestitures" dated October 23, 1970.

Is this the release to whom you refer?

A Yes.

Q Who was Mackay at that time?

A He was an independent public relations counsel that we had on a retainer basis at that time who assisted us in disseminating press releases.

Q As a consequence of the release of Exhibit 3 for identification, was there any publicity in the public press, to your knowledge, of the anticipated sale of vessels?

A Yes. There was an extensive story in the Wall Street Journal shortly after we issued this release and there were stories in numerous other publications based on the release.

THE COURT: What was the basic idea you were trying to carry out? You were liquidating or what?

THE WITNESS: The basic thrust was that the corporation intended to divest itself of a significant number of its operations, operations which either did not fit into our long-term plans or which were not profitable or which for some other reason we did not wish to retain as part of the corporation.

THE COURT: Did the press release specifically state you were selling the Thalia and the Barbara?

MR. COHEN: It did not on its face, but I would like to direct the witness' attention to the second paragraph on page 2.

Q Please look at this.

MR. SOVEL: Objection. I thought your Honor's question was whether the press release so stated -- I mean the press article so stated.

THE COURT: I asked him about the press release.

MR. SOVEL: I'm sorry.

A The press release indicated that we intended to go out of the business of operating tankers.

THE COURT: With the Barbara and the Thalia tankers?

THE WITNESS: Yes.

THE COURT: Did the Wall Street Journal article mention either of these vessels specifically?

THE WITNESS: By name?

THE COURT: Yes.

THE WITNESS: I don't believe so.

THE COURT: Proceed.

Q How did it come to pass that Vernitron was announcing the sale, disposition by Commerce, of Commerce's vessels?

A Well, Vernitron being a public corporation has an obligation to disseminate any significant news concerning its operations, and we therefore handled the public relations for all of the companies, subsidiaries.

MR. SOVEL: If your Honor please, I'm having considerable difficulty following the testimony because unfortunately Mr. Cohen is standing in front of the witness and they are so close their voices are not carrying back.

THE COURT: We are in a difficult room. We are on the ground floor and there are people always outside. There is not much we can do.

Please speak up so everyone in the room can hear you.

Q Had the disposition of Commerce's assets been to your knowledge the subject of a board meeting of Vernitron

Corporation?

A Yes.

Q When was that board meeting held?

A Towards the end of October of 1970.

Q I show you a one-page secretary's certificate certifying certain relations adoped on October 20, 1970 by the board of Vernitron Corporation and I ask you if you recognize that secretary's certificate?

A Yes.

Q Is that your signature that appears on it?

A Yes.

Q Do you recall what use was made of the secretary's certificate?

A I believe that these were used in connection with the contracts of sale of the vessels to show to the buyers that the action was properly authorized by Vernitron's board.

Q These resolutions read in pertinent part, do they not, that the president of the company, and the company is Vernitron Corporation, is that correct?

A Yes.

Q Or other executive officers be authorized to negotiate and enter into buying contracts of sale for the vessels Thalia and Barbara, is that correct?

A Yes.

MR. SOVEL: I object to that. I think the document speaks for itself. There are other portions of the document. I think we are getting to a question of leading and the document --

THE COURT: Are you going to offer the document?

MR. COHEN: Yes.

THE COURT: We can read it.

Any objection?

MR. SOVEL: No.

MR. COHEN: I offer 3 and 4 for identification into evidence.

THE COURT: Received.

(Commerce Exhibits 3 and 4, received in evidence.)

xxx

MR. SOVEL: I thought that -- was 3 the original press release?

THE COURT: Freeman P. Mackay, Jr.

You have never offered the press release. Are you offering that?

MR. COHEN: Yes.

THE COURT: There is an objection to that?

MR. SOVEL: Yes.

THE COURT: What is the ground for objection.

MR. SOVEL: It is not a document that would be

binding on the NMU and irrelevant to us. It is something appearing in the newspaper --

THE COURT: What is the purpose of this?

MR. COHEN: In January of 1971 Mr. Sovel represented to Judge Frankel that we had proceeded in secret. This is a public release issued by a public corporation with respect to the sale. These are facts which as this testimony --

THE COURT: I will receive it.

What is 4?

MR. COHEN: It is a certificate which was given to the buyers of the vessel in connection with the contracts of sale showing that the officers of Vernitron Corporation were acting --

THE COURT: Can I see 4?

(Pause.)

THE COURT: That contains resolutions passed by the board of Vernitron Corporation, October 1970 relating to the sale of the two ships. There any objection to that?

MR. SOVEL: No, your Honor.

THE COURT: That's received.

Q Subsequent to entering into the contracts of sale for the vessels Thalia and Barbara did Vernitron Corporation issue any public release concerning those facts?

A Yes, we did.

Q I show you a public release in the same form as Exhibit 3, dated December 28, 1970. I ask you if you can identify that.

A Yes. That's the release that we put out announcing the sale of the tankers.

Q Did that receive any publicity in the public press, if you know?

A Yes. There was a lengthy story in the Wall Street Journal and a more detailed story in the Journal of Commerce.

In addition, the item appeared in the New York Times and was carried by both Associated Press and United Press International. I know that because our clipping service sent us clippings from newspapers all over the country that had run the item.

Q I show you a photocopy --

THE COURT: We have a press release, December 28th. Are you offering that?

MR. COHEN: I will offer that together with the next exhibit.

THE COURT: What's the identification number for the 28th of December press release?

MR. COHEN: 5, your Honor.

THE COURT: Thank you.

Q I show you a photocopy of a newspaper clipping

and on it are the words Journal of Commerce, December 30, 1970. This has previously been marked Commerce Exhibit 62 for identification during the depositions in this proceeding.

THE COURT: It's an article where?

Q Do you know where this article appeared?

A This is a clipping from the Journal of Commerce from December 30, 1970, containing details of the sale of the two tankers.

Q Does that article, if you know, mention the vessels Thalia and Barbara by name?

A Yes, it does.

Q Does it mention the purchasers of the vessels by name?

A Yes.

Q Did Commerce Tankers Corporation or Vernitron Corporation attempt to keep the sale of the vessels Thalia and Barbara a secret from anybody?

MR. SOVEL: Objection, your Honor.

THE COURT: Overruled.

A No. We certainly did not.

Q Do you know what the Journal of Commerce is, what kind of publication it is?

A The Journal of Commerce is a publication that appears Monday through Friday which services the shipping

industry, primarily.

THE COURT: There was also an article in the Wall Street Journal?

THE WITNESS: Yes.

Q Was the Journal of Commerce article only a repetition of the public release which you had issued?

MR. SOVEL: Objection, your Honor. The article speaks for itself.

THE COURT: We can read the articles.

MR. COHEN: I move that 5 and 6 for identification be admitted.

THE COURT: Any objection?

MR. SOVEL: No.

(Commerce Exhibits 5 and 6, were received in evidence.)

xxx

THE COURT: Was there anything additional in the Journal of Commerce article you wanted to call my attention to that was not in the press release? It is there in evidence and we do not need to bother examining the witness on that.

MR. COHEN: The intent of the last question was to demonstrate through this witness that the Journal of Commerce reporter had been able to dig up certain miscellaneous facts.

THE COURT: What is there, in addition?

MR. COHEN: The name of the buyer, for example, isin the Journal of Commerce article. It would not normally appear in our press release and did not in this case.

THE COURT: Fine.

Q Did you testify earlier today your responsibilities included areas of labor relations?

A Yes.

Q Were you directly responsible for negotiations of collective bargaining agreements?

A On an advisory basis.

If a division or subsidiary of the corporation had requested my assistance, I would assist them.

Q Did Commerce Tankers Corporation ever request your assistance in that connection?

A Not to my recollection.

Q Did you have any operating procedures concerning the labor relations of divisions and subsidiaries with respect to keeping advised?

A We tried to keep track of what was happening in the labor relations area to the extent that we maintained a file of collective bargaining agreements in my offiee.

Q Did you ever see the NMU National Maritime Union blue book at any time prior to December 23, 1970?

A No.

THE COURT: Let's pause there for a moment.

Paragraph 13 as a stipulation, that has the text of this Article I, Section 2, provision, which concerns us and it says at the end a contract was printed in booklet form and so forth.

Are you talking about the blue book?

MR. COHEN: Yes, your Honor.

THE COURT: Are you going to introduce that?

MR. COHEN: Not with this witness.

MR. SOVEL: Your Honor, I will agree that the blue book he is referring to contains that provision.

THE COURT: All right.

MR. SOVEL: I might say that the cover, blue, has very little significance. They come out in different colors.

THE COURT: Before December 28, 1970, did you know about this provision, Article I, Section 2 of the collective bargaining agreement between the NMU and its deep sea tanker and dry cargo vessels operators, the one referred to in the stipulation?

THE WITNESS: No.

Q Do you know what ultimately became of the vessel Barbara?

A The Barbara was ultimately sold, I believe around the middle of 1972, to a company called Plaza Shipping.

THE COURT: When was it sold?

THE WITNESS: Around the middle of 1972.

Q Do you know what purchase price Commerce received from Plaza?

A Slightly under $700,000.

MR. COHEN: I direct your attention to paragraph 45 of the stipulation.

THE COURT: Anything that's covered in the stipulation you can refer to.

Q Do you know whether Commerce had any expenses in connection with holding and maintaining the vessel from March of 1971 to May of 1972?

A Yes. We had substantial expenses of keeping the ship in condition where it was docked.

Q Do you know who would have firsthand knowledge of those expenses?

A I think our controller, Mr. Michale Golden would be able to testify as to that.

Q Is there any other person?

A I think Mr. Levine may be familiar with that.

Q Do you know what happened to the contract of sale between Commerce and Vantage?

A The sale was not consummated with Vantage because of difficulties involving the labor relations situation with

the NMU.

Q Did Commerce and Vantage ultimately resolve their difficulties?

MR. SOVEL: These are covered by the stipulation.

THE COURT: They are.

MR. COHEN: We have suddenly raised at the last pretrial argument by the National Maritime Union that in some way that settlement disposed of Commerce's rights against the NMU and they have made certain argument that I do not believe are justified by the instruments of settlement.

I have four instruments which I would like to get admitted by this witness.

THE COURT: All right.

(Record read.)

A Commerce and Vantage came to an agreement around the middle of 1973.

Q I show you an eight-page agreement dated May 31, 1973. I direct your attention to the last page. Is that your signature on there?

A Yes.

Q Is this the settlement agreement with Vantage?

A Yes.

Q At the same time, did Commerce and Vantage

exchange releases, if you know?

A I believe so.

THE COURT: You believe so?

THE WITNESS: Yes.

Q I show you an instrument that has been marked as 10 for identification. It is a release from Vantage --

MR. SOVEL: If your Honor please, I object to Mr. Cohen testifying. The witness can identify the document.

THE COURT : I'm sure you know what the document is too. Why don't you try offering them. I think we are wasting time.

MR. COHEN: I would like to offer the entire se of settlement papers.

THE COURT: You have Exhibit 9 which is the settlement. Any bojection to that?

MR. SOVEL: May I say: There is a closing file of that settlement agreement. I would have no objection to the entry of the entire closing file but these are parts of the documents and I object to them.

THE COURT: You can offer the other parts. He doesn't haveto offer it all.

MR. COHEN: I'll solve the problem and offer the entire closing file as 9 and I will just have to Xerox it all so the Court can have it tomorrow.

MR. SOVEL: Let it be deemed Exhibit 9 and mark it when it is available.

THE COURT: Fine.

(Commerce Exhibit 9, deemed marked in evidence.)

MR. COHEN: I have no further questions of this witness.

(Continued on next page.)

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THE COURT: Now cross-examination of Mr. Sachs.

MR. SOVEL: May I have the exhibits which have been offered?

(The clerk hands to Mr. Sovel.)

MR. COHEN: Your Honor, we have an open question with respect to Exhibit 1. Mr. Sovel was going to --

MR. SOVEL: Oh, I have no objection to Exhibit 1.

THE COURT: All right, Exhibit 1 is received.

THE CLERK: 1 through 6 have been received.

xx (Exhibits 1 through 6 marked in evidence.)

CROSS EXAMINATION

MR. SOVEL:

Q Mr. Sachs, the date of the agreement for the sale of the Barbara was December 23, 1970, was it not?

A Yes.

Q The date of the article in the Journal of Commerce was December 30, 1970, was it not?

A That is right.

Q After the agreement had been entered into?

A That is right.

Q Who was in charge of labor relations for Commerce Tankers?

A For Commerce Tankers specifically?

Q Yes.

A I don't know.

Q Wasn't it Mr. Milton Pilalas?

A Mr. Pilalas was the head of Commerce Tankers. I don't know if he was specifically in charge of their labor relations or if someone in their organization handled it.

Q Mr. Milton Pilalas is now dead, is he not?

A Yes.

Q You were in charge of labor relations for Vernitron.

A Yes.

Q And as such I believe you testified that you supervised or had authority to supervise the labor relations of the subsidiaries of Vernitron?

A Yes.

Q Including Commerce?

A Yes.

Q Did you ever in your role as a supervisor of labor relations of Commerce read the collective bargaining agreements of Commerce prior to December of 1970?

A No.

Q They were available to you, were they not?

THE COURT: He has already testified to that. Let us not belabor it. He said he had the whole file.

Q At the time the corporate resolution authorizing the Vernitron officers to negotiate the sale of Commerce's assets, did you make any statement at all as to what effect this might have on labor relations of Commerce?

A No.

Q Now you signed the two contracts which are Exhibits 1 and 2 in evidence, did you not (handing)?

A Yes.

Q And I believe that you signed them on behalf of Commerce?

A Yes.

Q And Mr. Nathanson signed them on behalf of Vernitron?

A Yes.

Q Did you read them before you signed them?

A Yes.

Q Did you understand them?

A I believe so.

Q I call your attention to --

THE COURT: Excuse me, you are asking about the contracts for the sale of the Barbara and the Thalia?

MR. SOVEL: Yes, your Honor.

THE COURT: And you are saying that Mr. Sachs --

MR. SOVEL: For Commerce.

THE COURT: -- for Commerce signed for Vantage.

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MR. SOVEL: Mr. Nathanson.

MR. COHEN: Mr. Sovel, the Judge asked about Vantage.

THE COURT: Vantage.

MR. SOVEL: Oh, for Vantage, pardon me.

A I thought that is what you were saying, that somebody signed for Vantage.

Q No, signed for Vernitron.

MR. SOVEL: If your Honor please, if I may clarify it, there are three signatures on each contract.

MR. COHEN: That is not correct, Mr. Sovel.

THE COURT: The contract I have is for the Barbara, I believe --

Do you have that?

MR. SOVEL: If your Honor please, I have that, and you are correct. On the contract for the sale of the Barbara it is signed on behalf of Commerce and on behalf of Vantage.

On the contract for the sale of Thalia it is signed by Tanker "Four Lakes", Inc., Commerce and Vernitron.

THE COURT: May I see that?

(Mr. Sovel hands to the Court.)

THE COURT:And is it Mr. Nathanson -- how do you spell it?

MR SOVEL: I believe it is N-a-t-h-a-n-s-o-n.

THE COURT: Mr. Nathanson witnessed the Barbara contract, did he not?

MR. COHEN: No, your Honor; Mr. Simon, our next witness.

THE COURT: All right, go ahead.

BY MR. SOVEL:

Q Referring to the exhibit which is the contract for the sale of the Thalia, I call your attention to paragraph 9 which appears on the bottom of page 6 and the top of page 7.

(The witness examines.)

Q I ask you to read it -- and I note that you are reading it. That provision provides, does it not, that the same unions would continue aboard the vessel?

A Yes.

Q I take it that you were aware of that provision at the time you signed the contract?

A I don't think I read it that closely.

Q You did not read it that closely?

A No. I was not a party to the negotiations.

Q How much were you selling the ship for?

A The Thalia?

Q Yes.

A $3,050,000.

Q And you weren't reading the contract that carefully?

A There were other people --

Q You weren't reading it that carefully.

A That is correct.

THE COURT: You interrupted his answer, and then you made a statement.

MR. SOVEL: No, that was a question, I am sorry. He said he did not read it that carefully.

MR. COHEN: I think he said there were other people participating in the negotiations.

THE COURT: Well, let him finish.

A I was not involved in the negotiations.

THE COURT: Next question.

Q In view of that answer, you stated, though, that you did read the contract before you signed it.

A Quickly.

MR. SOVEL: Excuse me one moment, your Honor.

THE COURT: Okay.

(Mr. Sovel examines)

Q You were an officer of Commerce at the time the negotiations for the sale of these vessels was occurring, were you not?

A Yes.

Q Did you in any way actively participate in the management of Commerce at that time?

A No.

Q Was your title merely a formality?

A Yes -- my title so far as Commerce?

Q Yes.

A Uh-huh -- yes.

Q And the management of Commerce was the responsibility of Mr. Pilalas at that time.

A Yes.

Q You were aware, were you not, that Mr. Pilalas himself wanted to buy the vessels at that time?

A Yes.

Q And despite that Vernitron permitted Mr. Pilalas to continue the management of Commerce?

A Yes.

THE COURT: Is his answer supposed to mean something?

MR. SOVEL: Pardon?

THE COURT: Is that answer supposed to mean something?

MR. SOVEL: I think it will, your Honor, in the way the context of the evidence will develop here. I will submit that a good deal of the problems in this situation that Vernitron has stems from leaving Mr. Pilalas in authority

at Commerce.

BY MR. SOVEL:

Q Did you in your capacity for Vernitron, or in your capacity for Commerce ever send any notice to the National Maritime Union of the sale of either the Barbara or the Thalia?

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A No.

Q Was any notice sent, to your knowledge, by anyone?

A I don't know.

Q By the way, did you ever review, aside from the NMU contract with Commerce -- did you ever review any collective bargaining agreements which other unions had with Commerce?

A No.

MR. SOVEL: No further questions, your Honor.

THE COURT: Any redirect?

MR. COHEN: No, your Honor.

THE COURT: All right, you may step down, Mr. Sachs.

(Witness excused)

MR. COHEN: Your Honor, just for the record, Vantage advises that it has no questions.

THE COURT: All right.

MR. COHEN: I call Mr. Kenneth Simon.

K E N N E T H S I M O N, called as a witness, having been

duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. COHEN:

Q Mr. Simon, what is your profession?

A I am an attorney.

Q What is your principal area of practice?

A You mean at the present time?

Q At the present time.

A At the present time it mostly concerns corporate matters, involving American Indians and estate practice, and some shipping work.

Q Prior to 1970 what was your principal area of practice?

A Shipping work.

Q Did you have any connection with Commerce Tankers Corporation in connection with its sale of the vessels Barbara and Thalia?

A Yes.

Q Were you retained by Commerce?

A Yes.

Q In what capacity were you first retained?

A I think I was first retained, I believe, either in October or November of 1970 in connection with a proposed sale of the Barbara and the Thalia to a corporation called

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East-West-- and I don't remember the rest of its name-- which was a foreign-flag operator in connection with the proposed sale of the vessels to East-West.

Q Did that sale come to pass?

A No, it did not.

Q Were you subsequently advised by Commerce of a new transaction?

A Yes.

Q How did that happen?

A I think I received a call from you at my home on a Sunday -- I think it was December 20th, if that is a Sunday -- in 1970, asking if I could meet with you at an office on 57th Street -- a Mr. Blix's office, concerning a proposed contract of sale -- I think it was either of the Thalia or the Barbara, either one -- I don't know clearly at this point -- and at that time I think I told you-- yes, I told you that I could not meet you the first thing Monday morning because I had other clients that I had to deal with but that I would get there as soon as I could.

Now I did go from my office Monday morning, I gathered up some papers including some contract of sale forms and other agreements and met you, and I think Mr. Nathanson in Mr. Blix's office, and also the potential purchasers of the vessel --

Mr. Cohen, which vessel was first?

Q Well, what is your best recollection of who else was there on the Monday following the phone call?

A Well, it was the people who were purchasing the vessel, and they were from the Texas City Refining Company. I don't remember the principal's name. Their attorneys -- and I don't remember the gentleman's name either but they were from the firm of Kirlin Campbell & Keating -- I believe the vessel was the Barbara.

Q Did you bring anything with you to the -- did you say you believe the vessel was the Barbara?

A Or the Thalia, whichever one was the first one-- the one that went to Texas City Refining.

Q Did you bring anything with you to Mr. Blix's office?

A Yes.

Q What did you bring?

A I went into my office first, as I said, and gathered up really some forms of past contracts of sales that had been used in connection with the vessels or whatever I had with regard to the Barbara and the Thalia.

Q Directing your attention to Commerce Exhibit 1 in evidence, did that contract of sale ultimately come to pass, if you know (handing)?

A Yes, and I see now that the first vessel was at the meeting that I had on the 21st in Blix's office, it concerned the Thalia. It was the one sold to Tanker "Four Lakes" Inc. which, as I recall, was the corporate name of the Texas City Refining Company that took the vessel.

THE COURT: What is the date of the first contract?

THE WITNESS: December 23, 1970.

Q Is it your testimony that this contract was essentially prepared on December 21st?

A Yes.

Q I direct your attention now to clause 9 relating to --

Well, what does it relate to, Mr. Simon?

A It relates to the fact that the buyer will, on the date of the transfer of the vessel, have contracts with each of the same unions presently represented on the vessel.

Q Was there any discussion of that clause in connection with the sale of the vessel Thalia to Texas City?

A No.

Q Had that clause been in your prior forms of contract which you brought with you on the 21st?

A Yes.

Q Now directing your attention to Commerce Exhibit 2,

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do you know whether or not a similar clause to clause 9 appears in Exhibit 2 (handing)?

A You mean as signed?

Q As signed.

A The answer is "No."

Q How did the first draft of Exhibit 2 get prepared?

A It was prepared that day in Mr. Blix's office. Immediately after the Thalia had been worked out, I was then informed that there was also to be a contract of sale on the Barbara, and as they were typing and doing the Thalia they were also putting together the contract of sale for the Barbara.

Q Do you know where the vessel Thalia was located at the time these events were taking place?

A I think my recollection is that it was in a United States port.

Q Do you have any recollection as to whether or not it was about to depart?

A Yes, it was about to depart, as I recall -- it was-- yes, I think so. It had cargo, I believe, if my memory serves me right -- a cargo of grain heading for Indiana.

Q Was there any need for speed in the preparation of the instruments, 1 and 2 in evidence?

A Everybody acted as if there was a need for great

speed, yes.

Q Were you told anything about Vernitron's financial circumstances in connection with the sales?

MR. SOVEL: Objection, your Honor.

MR. COHEN: Not for the proof of the circumstances, your Honor--

THE COURT: Just to show the activity on the making of the contract?

MR. COHEN: Yes, your Honor.

THE COURT: All right, I will receive it.

A Yes, I understood that Vernitron's financial position was such that they had to sell these vessels.

Q Was the original -- I am not sure if I have covered this with you, Mr. Simon -- excuse me if I have-- is your testimony that the original contract of sale covering the Barbara contained a clause substantially the same to clause 9 for the vessel ~~failure~~ Tooh?

A Yes.

Q Do you know how that clause got eliminated between the draft and the final execution of Exhibit 2 in evidence?

A Yes.

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Q How did that happen?

A The contract as drafted had a clause similar to

clause 9 of the Thalia contract.

MR. SOVEL: If your Honor please, I think before he testifies the basis of his knowledge ought to be established.

Q Did you personally participate --

MR. COHEN: I accept that, Mr. Sovel.

Q Did you personally participate in any meeting with the people from Vantage?

A Yes.

Q How many such meetings did you personally participate in -- this is prior to December 23, 1970.

A I remember one.

Q Where was it?

A It was in Vantage's office.

Q Who were present for Vantage?

A Mr. Corletta. There was at least one or more other individuals there from Vantage whose names I will have to have suggested to me. I don't recall of my own knowledge those names.

Q Do you know whether a lawyer was present for Vantage?

A I don't recall any attorney being present for Vantage.

Q Do you know the name John Lang?

A Yes.

Q Did you at any time meeting Mr. Lang in connection with this contract at any time, on or after December 23, 1970?

A Well, I have seen Mr. Lang after December 23, 1970, yes, and met with him after that, but prior to December 23, 1970, I had not met with Mr. Lang.

Mr. Nathanson was there. Mr. Cohen was there. I was there. That's the only persons that I can recall at this point being there.

THE COURT: You said Mr. Corletta was present?

THE WITNESS: Yes, your Honor,but there were also other individuals there from Vantage, but I don't recall their names.

THE COURT: I think we had better take our morning break now.

(Recess)

MR. COHEN: Will you please read the last, Mr. Reporter?

(Record read by the reporter.)

BY MR. COHEN:

Q Did you have background in the labor relations area at this time?

A No.

Q The meeting that you referred to, in answer to several preceding questions, when with relation to December 23rd did that meeting take place?

A You mean the meeting that I testified in Vantage's office?

Q Yes.

A It was the evening of December 22nd.

Q The evening?

A Yes.

Q Was there any discussion at that meeting on the question of unions or labor relations?

A Yes.

Q What was the nature of that discussion?

A Mr. Corletta said that the clause concerning the unions would have to come out, that it had to come out of the agreement, and there was a substantial discussion concerning whether that clause, whether it should come out and why Mr. Corletta felt it had to come out.

Q What did Mr. Corletta say?

A Mr. Corletta said that the clause would have to come out and that he would deal with all problems concerning the unions, and that he would take care of anything dealing with the unions, and that would be his problem.

Q What did you understand by that?

MR. SOVEL: Objection, your Honor.

THE COURT: Overruled.

(Question read by the reporter.)

A I understood by that that Mr. Corletta would handle any problems that might arise with the unions concerning this vessel.

Q Did you subsequently learn that any such problems had arisen?

A Yes.

Q When was that?

A January 25, 1971.

THE COURT: 1971?

THE WITNESS: Was it 1971? Yes.

MR. COHEN: The contract of sale was December 23, 1970.

THE WITNESS: That was the next year.

THE COURT: I did not get the date, then.

THE WITNESS: January 25, 1971.

THE COURT: Oh, January. I'm sorry.

Q How did you learn that such a problem had arisen?

A I got a call from someone, I believe, at Vernitron -- I don't know exactly who -- telling me that they had received notice of a demand for arbitration by the NMU arising out of the proposed transfer of the vessel.

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Q Did you do anything in that connection thereafter?

A Yes. I was also -- I think it was in that same telephone call -- I am just trying to recollect the sequence-- I am not exactly positive but I recall speaking with Mr. Corletta and advising him of the arbitration.

I also recall that I believe you were either out of town or unavailable, Mr. Cohen, and speaking with Mr. Corletta and advising him of the arbitration and discussing with him the arbitration, and in the course of that conversation he asked me if I knew where the vessel was or where it was due to arrive in New York.

I think I told him yes, it was due to arrive in New York somewhere around February 7th or February 8th, and he asked me if I would obtain a postponement of the arbitration until February 8th, until the vessel arrived in New York, as I recall.

Q In your conversation with someone from Vernitron had there been any question of delaying or postponing the arbitration raised at that time?

MR. SOVEL: If your Honor please, I would like to have the beginning of the question read back.

MR. COHEN: The beginning of the question was:

In your conversation with someone from Vernitron, the witness in his immediate prior answer stated that he

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had a conversation with someone from Vernitron.

THE WITNESS: Yes.

MR. SOVEL: I ask for the question to be read back, your Honor, because we do not have--

THE COURT: Let us have the whole question read back.

(Question read by the reporter.)

MR. COHEN: If that is the question as recorded I would like to withdraw it and ask another question.

THE COURT: All right, withdraw the question.

BY MR. COHEN:

Q Did I understand you correctly, Mr. Simon, that you discussed the NMU demand for arbitration with Mr. Corletta -- is that correct?

A Yes.

Q Did you also discuss it with some other person?

A Yes.

Q Some other person affiliated with the Vernitron Corporation?

A Yes.

Q Do you have any idea who that was? Do you have a recollection of who that was at this time?

A I am not positive. I have a recollection that it was Mr. Nathanson but I am not completely positive.

Q In your conversation with someone from Vernitron did the question of the timing of the arbitration come up?

A Yes, to the extent that, as I recall, Mr. Cohen, that you were out of town and the suggestion was that I obtain a postponement for a day or two until you would be back in town.

Then either at about that time or right after that I spoke with Mr. Corletta and had a conversation that I just referred to, in which he suggested that it be postponed until such time as the vessel would be back in New York, and that date would be around February 8th.

Q Did you do anything else?

A Yes, I contacted the NMU and I believe I spoke with Mr. Phillips. I asked for a postponement and I believe it was agreed that the arbitration would be postponed until February 8th.

Q Did you speak to the arbitrator?

A I believe so, but I had no clear memory of it. I believe I -- I may have spoken with Mr. Kheel, but , on the other hand, I may have spoken with someone in his office to set up the date.

THE COURT: Who was Mr. Kheel?

THE WITNESS: The arbitrator.

THE COURT: Theodore Kheel?

THE WITNESS: Yes.

THE COURT: You spoke to somebody in Mr. Kheel's office?

THE WITNESS: I have no recollection of who.

THE COURT: What did you speak to him about?

THE WITNESS: About the date of February 8th, whether Mr. Kheel would be available on that date.

Q Did mr. Corletta say anything to you in his connection with you as to why he was concerned as to the

locale of the vessel?

A He thought he could better handle the situation with the vessel here in New York and he could take care of the situation better here. He also felt in the event anything was going to happen, a strike -- I think he used the word strike -- that he could handle it better if the vessel was in New York.

Q Did the arbitration ultimately get set for February 8th?

A Yes, sir.

Q As a result of the conversations you had on January 25th, what was your understanding as to who would handle the arbitration from the employer's side?

A Mr. Corletta.

Q Was there any question of counsel mentioned?

A No. He did not mention any question of counsel.

Q Who was the party by whom arbitration had been demanded?

A My best recollection was that it was Commerce Tankers.

Q Did there come a time when prior to February 8th Commerce raised any question of Vantage as to what would transpire with respect to the arbitration?

A Yes. There was a meeting that took place at

Vantage's office. That was February 4th, I think. There was a discussion as to the arbitration and what was to be done.

Q Who was present at the meeting?

A I was there. You were there, Mr. Cohen. Mr. Nathanson was there. There may have been other persons there also from Vernitron and/or Commerce.

Mr. Corletta was there. Mr. Lang was there, and, again, there were other persons there from Vantage whose names I don't recall at this time.

THE COURT: Youtalked about postponement to February 8th. When was the arbitration originally set for?

THE WITNESS: Your Honor, I do not recall myself. The date of January 25th sticks in my mind as either notice of it or the date of it, but I would have to see the notice.

THE COURT: Does anybody know?

MR. COHEN: Your Honor, I believe the evidence in this case will show that arbitration was demanded on January 25th and it was set for February 8th and never adjourned or postponed. Obviously, there was a request that it not be held immediately --

MR. SOVEL: There was a demand for immediate arbitration and then set for the later date. I think both Mr. Cohen and I, we ought to stick to the evidence. We have great disagreement on this.

THE COURT: We will go along then. Go ahead.

Q To your knowledge, was the arbitration ever set for any date prior to February 8th?

A I have no recollection of that.

Q Getting back to the meeting of February 4th, what did Vantage or the representatives of Vantage say in substance to Commerce at this meeting?

MR. SOVEL: If your Honor please, I think we are going into an area of hearsay.

MR. COHEN: I don't think it is hearsay at all.

THE COURT: I think we are getting the steps taken by these various parties.

I will overrule the objection.

Q Just to make this clear, you were personally present at this meeting?

A Yes.

Q What is your recollection of what happened, who said what to whom?

A Well, the Vernitron-Commerce people were saying this arbitration -- had received this demand for arbitration and what did Mr. Corletta and Vantage plan to do about it.

During that meeting Mr. Corletta and Mr. Lang made it clear that they intended to do nothing about it, that they did not intend to go to the arbitration, that the

arbitration would have to be handled by Commerce.

Various suggestions were made to Mr. Corletta and to Mr. Lang concerning the problems and their suggestion and advice at that time was that the Vernitron and Commerce people go see the NMU.

At that meeting, as I recall, Mr. Nathanson asked whether or not it would be possible for him and Mr. Corletta to meet together with the SIU and Mr. Corletta said no, and he would not have anyone meet with the SIU and if anyone was to meet with the SIU that would be him and all he could suggest was that the Commerce people go see the NMU.

THE COURT: Who is Mr. Lang?

THE WITNESS: He is an attorney representing Vantage.

Q You used the initials SIU. Whom does that refer to?

A Seamans -- Seafarers International Union.

Q You said various suggestions were made to the Vantage people. By whom?

A I think I made some of those suggestions.

Q What were some of the suggestions you made?

A Mr. Corletta said that all -- that union contracts were with the SIU, and he already knew that the union contracts with regard to this vessel were with the NMU. I suggested

that a separate or different corporate entities formed, that the contract of sale if necessary, be assigned by Vantage to these different corporate entities and these entities could then enter into contracts with the NMU and take over the existing contracts on the vessel.

Q When you made that suggestion did you believe it would be lawful for Vantage to have done that?

A Yes.

Q What next happened?

A Mr. Nathanson, you, Mr. Cohen, and myself, visited the NMU and I believe that was the next morning, the morning of February 5th.

Q Who was present on behalf of the NMU/

A I can remember meeting Mr. Phillips I think during the day and there were at least two or three other individuals of the NMU that we met. I would have to have names suggested to me, because the names I don't remember.

One of the gentlemen I recall was in charge of research. Another was a vice president of the NMU, but their names, I don't recall.

Q The gentleman sitting in the courtroom in the back --

A He looks familiar as one of the gentlemen there that day, but I don't remember his name.

Q His name was Mr. Barisic.

A He was one of the gentlemen who was there.

THE COURT: We have had mention of Mr. Nathanson. Who was he?

THE WITNESS: He was an officer of Vernitron.

Q To the best of your recollection, what happened at the meeting with the NMU on February 5th?

A We acquainted the NMU people with the problem that we had been informed the night before by Vantage that they would not attend the arbitration; that in effect they were not prepared to solve the problem.

We discussed with them ways and means of possible working out of the difficulty and made various suggestions to them and tried to find out what, to their view, would solve the problem.

They kept repeating that the only thing that would solve the problem was that they needed this ship and these jobs and that they would not voluntarily give them up and that as far as they were concerned, the vessel would have to remain as an NMU vessel and that was their hard and fast position on it.

They seemed generally warm and personally sympathetic but as far as they could see, their position was quite clear.

Q Was anything said about monitored contributions to the pension funds?

A Yes. I have no recollection of amounts, but that was discussed.

I can also recall being discussed the SIU contract and I can recall going to the gentleman's office whom I believe was their director or research, or some title similar to that, and his getting out the SIU contract and our reading through the SIU contract to see what the SIU contract said with regard to transfer of vessels.

THE COURT: What was said about contributions to the pension fund?

THE WITNESS: Your Honor --

THE COURT: Who discussed what?

THE WITNESS: I just remember there was a discussion of pension fund and something about payments to the pension fund but I could not tell you now who said what to whom.

Q Do you know who raised the subject?

A No. I really do not recall, whether it was -- I don't know.

Q Was the suggestion of contributions to the pension fund ultimately one that was rejected?

MR. SOVEL: Objection.

THE COURT: Sustained. I don't know who suggested

it.

MR. COHEN: Perhaps we can get at it that way.

Q Was there any discussion of the arbitration?

A There was some discussion of the arbitration and the main discussion was the NMU's position that they wanted the arbitration to go forward.

Q Was there anybody suggesting that it not go forward?

A At that point, no.

THE COURT: What was to be arbitrated? Was there a violation?

THE WITNESS: I believe it was the NMU's position that no undertaking had been obtained from the new buyers concerning the union contracts on the vessel and that they therefore were arguing that the vessel should not be transferred.

Q Do you remember anything else about this meeting at the NMU?

A It lasted quite a while, at least a couple of hours. More than that.

I remember going person to person inside the NMU. The end result was that there was no suggestion, no agreement, on the part of the NMU to anything other than the position that they had to have the ship and they had to have these jobs.

Q Did they suggest any way in which that problem could be resolved?

A Well, there was this review of the SIU contract and my discussion with the gentleman at the research department and there was our conclusion that there was nothing in that contract that would have precluded formation of a separate corporation and the buyer and the union taking over this contract and operating an NMU vessel.

Q Did you tell that to the research director of the NMU?

A I think we had a discussion on it. We looked at the SIU clause in the contract, yes.

Q Did you attend the arbitration?

A Yes.

Q Was it held on February 8th as scheduled?

A Yes.

Q Who else waspresent?

A You were there, Mr. Cohen. I believe Mr. Phillips, Mr. Sovel, Mr. Kheel -- that's all I can remember being there.

Q To the best of your recollection, what happened before Arbitrator Kheel?

A Well, there was a meeting with him. At that time the union took the position they wanted to stop the transfer

of the vessel.

Mr. Kheel listened to the union presentation. As I recall, no witnesses were sworn. As I recall -- I don't recall any transcript being made of the arbitration.

After they were through you, Mr. Cohen --

Q Who conducted the presentation for the NMU?

A I believe it was Mr. Sovel, but I'm not positive as to which one it was. Either Mr. Sovel or Mr. Phillips.

Q Then what happened?

A There was a request made by you, Mr. Cohen, I think, to have a postponement of the arbitration. I think you asked for a three-day or two-day postponement or something like that, indicating to Mr. Kheel at that time also that youwanted to get other counsel in on that as well.

Mr. Kheel listened to that and then I think it was Mr. Phillips who said he would not agree to any postponement because he was afraid the vessel would be transferred in the interim, in those two days.

You assured Mr. Kheel it would not be.

Mr. Phillips, I believe, stated that you could not trust anyone in this business and shortly thereafter Mr. Kheel advised us that he would issue a ruling immediately in favor of the union and stated that the vessel should not be transferred.

Q How long did the meeting before Arbitrator Kheel take?

A I don't think it took more than twenty or thirty minutes, including being introduced to everybody.

Q At the conclusion of the meeting, Arbitrator Kheel told the NMU what the relief he would grant to them?

A That's correct.

I think he also said he would issue a written opinion later that day.

Q Do you recall whether or not there was any request to make a record of witnesses and testimony?

A Yes. You said you had witnesses to offer and would offer witnesses, that you wanted to make a record, you wanted to show before Arbitrator Kheel what the facts and circumstances concerning this entire matter was.

Q Was there any question raised as to the circumstances of the sale being unusual?

A Yes. Our position was they were highly unusual. You wanted to lay out exactly on the record what had occurred.

Mr. Kheel's position was that that was not necessary, and the union kept objecting to that.

THE COURT: Objecting to what?

THEWITNESS: To having witnesses or testimony.

Their position was, your Honor, that they wanted

immediate ruling from Mr. Kheel and that was necessary in order to stop the transfer of the vessel.

Q Did a written order of award subsequently issue?

A Yes.

Q I show you a copy of Commerce 10 for identification --

THE COURT: Is that the arbitration decision?

MR. COHEN: Yes.

THE COURT: Any objection?

MR. SOVEL: No.

THE COURT: It will be received.

xxx (Commerce Exhibit 10, received in evidence.)

Q Did you have any further involvement in this matter after the issuance of the award?

A I don't understand what you mean by this matter.

Q In connection with the NMU aspects of the contract of sale.

A I have no clear recollection of it. I have a vague recollection of either talking with Mr. Phillips or Mr. Sovel after Mr. Kheel's ruling but I have no sharp recollection of what that was in relation to.

Q Do you have any recollection of being told that there was --

MR. SOVEL: Objection. Leading.

THE COURT: I'll allow it. See if we can refresh his recollection.

Q Did you learn subsequently that there were court proceedings?

A Yes.

Q Did you learn that a temporary restraining order was issued?

A Yes.

Q Did you personally make any arguments in connection with the issuance of the temporary restraining order?

A No.

Q Did you learn that the NMU was in court seeking a temporary restraining order?

A I think I did learn that. That's a little hazy in my mind.

I did learn that at a subsequent date, but I know I did not -- I have no memory of ever arguing anything on a temporary restraining order.

I may have picked up the order on the temporary restraining order, it may have been mailed to me, or I may have personally received it either from Mr. Phillips or Mr. Sovel or their office.

Q To your recollection you never made any argument?

A No.

MR. COHEN: I have no further questions.

MR. SOVEL: Mr. Klein would precede me.

MR. KLEIN: May we go off the record for a minute or two, so I may ask my client a question or two?

THE COURT: Yes.

(Discussion off the record.)

MR. COHEN: Your Honor, may I ask a few more questions?

THE COURT: Certainly.

CONTINUED DIRECT EXAMINATION

BY MR. COHEN:

Q Going back to the arbitration, do you remember if anything was said before Referee Kheel as to the relationship between Commerce and Vernitron?

A No. I have no recollection of that.

Q Do you have any recollection of anything having been said about the financial condition of the seller or sellers of the vessel?

A No. I cannot recall anything being said at that time.

Q Were there any witnesses from the NMU present in

the room aside from having testified?

A You mean at the arbitration?

Q At the arbitration, or were the only people there the lawyers?

A I recollect the lawyers being there, but I don't recollect whether anybody else was there.

MR. COHEN: Mr. Sovel, I would like you to stipulate there is no transcript of the proceeding before Arbitrator Kheel in the absence of which perhaps we should call Mr. Kheel.

MR. SOVEL: I think we already have evidence no transcript was taken.

THE COURT: There is no contrary evidence. Nobody has a transcript.

CROSS EXAMINATION

BY MR. KLEIN:

Q I am counsel for plaintiff, Vantage.

I draw your attention to December 22nd, the evening meeting, in the Vantage office, at which time you testified that Mr. Corletta said that the clause concerning the undertaking to the union wouldhave to come out of the contract of sale. Do you recall that?

A Yes.

Q Did he give any reason at thattime as to why the

clause had to come out?

MR. SOVEL: Objection, your Honor.

THE COURT: Overruled.

A Yes.

Q Could you tell us the reason as he expressed them?

A He expressed them, his vessels were with the SIU and that's why the clause had to come out.

Q Is this all he said or did he amplify?

A He said it would cause trouble with the SIU.

Q Do you recall anything else he said concerning that subject?

A He repeated the clause had to come out and it would cause trouble with the SIU and he would attend to all union problems. I cannot remember anything else.

Q You testified earlier based upon my notes, that you understood Mr. Corletta would handle the arbitration from the lawyer's side. I ask you to state if you can recall the basis of that understanding.

A It was my telephone conversation with him when we were talking about a postponement of the union demand for arbitration and my general understanding of what he was purporting to do based on our conversation on the evening of December 22nd.

A Did he at any time say to you that Vantage or its

representatives would represent the employer's side at that arbitration?

A He told me to get it postponed until the vessel came into New York and he used the date of February 7th or February 8th.

THE COURT: The question is,did he expressly say --

THE WITNESS: I can't recall him expressly using those words.

Q If I am correct, and correct me if I am wrong, the conversation concerning the date of the postponement was keyed into the date that Commerce had informed Vantage that the ship would arrive in New York City, is that correct?

A I don't know if Commerce had informed Vantage of that.

Mr. Corletta in that conversation asked me when the vessel would be arriving in New York.

I told him and he said get it postponed until the vessel arrives in New York.

MR. KLEIN: I have nothing further.

CROSS EXAMINATION

BY MR. SOVEL:

Q Isn't it true, Mr. Simon, that what Mr. Corletta told you was to get it postponed until after the vessel arrived

in New York?

A My recollection is that he said until it arrived in New York. I don't know when that meant. The minute it arrived, when it arrived in New York, that's what he said.

Q Do you recall, Mr. Simon, testifying in the arbitration proceeding between Commerce Tankers Corporation and Vantage Steamship Corporation?

A Yes.

THE COURT: Mr. Corletta testifying?

MR. SOVEL: Did Mr. Simon recall that he testified in the arbitration proceeding, and he stated he did.

THE COURT: Proceed.

Q I want to read to you from your testimony beginning at the bottom of page 436 of the transcript of that hearing and over onto 437:

"Q Do you recall your conversation with Mr. Corletta?

"A Yes. I told him that there had been this demand for arbitration and I was going to try to get the postponement of it. He asked me when was the vessel arriving in New York and I told him it was my understanding that the vessel was going to arrive either February 6th or 7th. And he urged at that point that we try to get an extension of time until after the vessel arrived."

Do you recall so testifying?

A I have no recollection of it, but if you tell me that's the testimony Mr. Sovel, I assume that is the testimony.

MR. SOVEL: Is there any question this is the official transcript, Mr. Cohen?

MR. COHEN: None.

Q Is it your testimony that there was no prior scheduling of the date of the arbitration prior to February 8th?

A I have no recollection of any scheduling.

Q Again, I would like to read to you from your testimony beginning at page 436 of that transcript:

"A Well, I think first I received a telephone call, I think it was from Mr. Nathanson, informing me that there had been a demand made by the union for arbitration on the grounds of a breach of theunion agreement between Commerce and the NMU concerning the sale of the vessel.

"As I recall,the arbitration was going to be either the next day or the day after, the 27th -- the 26th, 27th -- it must be -- it was going to be right away."

Was that your testimony at the arbitration hearing?

A I have no recollection of it but if you say it was, it was.

Q You do not question that the transcript is the correct reflection of your testimony on that date?

A I have no question about that.

Q Mr. Corletta wanted you to get a postponement of the arbitration until after the vessel arrived in New York so that the vessel could be transferred and the arbitration would become moot, is that correct?

A That's not correct.

Q Why was he seeking it until after the vessel arrived in New York?

A The only answer he gave me was that he could better handle the situation with the vessel in New York and he would not be worrying about a strike if the vessel were in New York.

Q You know the vessel could have been transferred within a day of the vessel coming back to New York?

MR. COHEN: Objection.

THE COURT: Overruled.

A I don't know that.

Q But it is your testimony that Mr. Corletta wanted to make sure the arbitration did not occur before the vessel --

THE COURT: He said that five times. Let's not repeat.

When did the vessel get in?

MR. SOVEL: I don't recall. It was not eventually

until some time later in February.

THE COURT: It was not here on the date of arbitration?

MR. SOVEL: No.

MR. COHEN: I believe Mr. Sovel's statement to the Court is incorrect.

THE COURT: I don't understand some of these things not being agreed on. Everybody in this room would know when the vessel Barbara arrived in New York. It is apparently relevant.

MR. COHEN: It is set forth in our chronology of facts.

THE COURT: I have that. You say as of February 6th, vessel Barbara -- yes, you do have it. Vessel Barbara in New York en route to Mobile, February 6, 1971.

Is that right, Mr. Sovel?

MR. SOVEL: I must say I cannot state as a matter of fact. I have never seen the log books, but I won't question it. At that time we did know when the vessel was arriving.

THE COURT: Haveyou tried to agree on this chronology? Have you got together with your chronologies and tried to work out a joint one?

MR. SOVEL: Not completely.

THE COURT: I think you ought to do that and try to cut out these details.

MR. KLEIN: This morning the NMU delivered their version of the chronology to us. We have not had a chance.

THE COURT: As soon as you can, let's work on an agreed chronology.

BY MR. SOVEL:

Q Mr. Simon, at the meeting, at the NMU building, on February 4th --

A I believeit is February 5th.

Q Do you recall Mr. Nathanson saying to the NMU people "Can't we make some type of payment?"

A I have a recollection of discussions concerning payments, but whether Mr. Nathanson said that, I can't recall.

Q That was not said in conjunction with a pension and welfare payment?

A I can't recall that.

Q Going back to December of 1970, you came to the meetings of December 21st, 22nd, whatever those meetings were. With respect to the sale of the Barbara and the Thalia, was there a form of contract for the sale?

A I came to a meeting that was held in Mr. Blix's office on December 21st with a form of contract, that's correct.

Q Those were forms of contract that you had used

previously?

A That's correct.

Q For the sale of a ship. For the sale of an American flag vessel to an American flag purchaser?

A Yes.

Q In that contract, that form was essentially the form that was used for the sale of the Thalia, was it not?

A I have trouble with the word "essentially." I can't answer the question the way you have asked it.

Q The forms that you brought with you, they had a provision in them similar to the paragraph 9 that wasin the contract with respect to the sale of the Thalia with the continuity of the same unions aboard the vessel?

A Yes.

Q You had drafted that provision in conjunction with prior sales of American flag vessels?

A Yes.

Q Do you recall what transfer or what sale you had used in conjunction with the drafting of that form?

A No. I do not recall.

Q Do you recall handling a sale of a vessel called the Cedardale?

A Yes.

Q That had been an NMU contract vessel?

A I don't recall.

Q In drafting that form, whether it was in conjunction with the Cedardale or any other ship, did you review the collective bargaining agreements of the employer as being a basis for putting that clause in the contract and into your form?

A I don't recall specifically looking at the NMU agreement.

Q Did you look into any other collective bargaining agreement of any other union?

A No.

Q What was the source and the reason you had drafted the paragraph which became paragraph 9 of the Thalia sale contract?

A Based on my general knowledge that that clause went into the agreement because of the union requirement that the vessel, the same unions would remain on the vessel.

Q You did that on the basis of general knowledge and not on the review of collective bargaining agreements?

A I don't recall specifically reviewing collective bargaining agreements.

Q It was not just the NMU contract that required such a provision, was it?

MR. KLEIN: Objection, your Honor.

MR. COHEN: Objection.

THE COURT: Overruled.

A I don't recall.

Q Isn't it true it was your understanding that it was necessary under the Marine Engineers Beneficial Association contract, the Masters, Mates and Pilots contract, and the Radio Officer Union contracts?

A That's correct. Those unions were also onboard the vessel and they do have similar clauses.

Q It is your understanding this was applicable to all the unions on the vessel?

A I can't answer that question. I don't know that as a fact.

Q It was your understanding that you had to have this provision with respect to all the unions on the vessel?

A That's correct. This was my understanding.

Q You so advised the participants in charge of the sales of vessels prior to the sale of the Barbara and Thalia.

A If you mean was the clause normally in the contract that I prepared, yes.

MR. SOVEL: May I ask that these exhibits be marked for identification?

(NMU Exhibit A and NMU Exhibit B, marked for identification.)

xxx

Q I show you a document which has been marked as NMU Exhibit A for identification. I ask you if that is not a letter on your firm letterhead with your signature?

A That's correct.

Q Mr. Simon, the document which has been marked as Exhibit A for identification refers to another document, does it not, an agreement?

A Yes.

Q I show you a document that has been marked as Defendant's Exhibit B for identification and ask you if that's the A copy for the agreement that is referred to in Exhibit A?

A I can't answer that. I don't know that for a fact.

Q You don't recall that?

A No.

MR. SOVEL: If your Honor please, I offer into evidence NMU Exhibit A for identification.

As to NMU Exhibit B, I think I'll have to hold up on that, the offer of that.

THE COURT: Is there any objection to A?

MR. COHEN: I would like to see B before. A refers to that.

THE COURT: He is just offering A now.

pg1t

MR. COHEN: I have no objection.

xxx

(NMU Exhibit A, received in evidence.)

xxx

(NMU Exhibit C, marked for identification.)

THE COURT: I am going to adjourn a few minutes early. Why don't --

THE WITNESS: I will have a problem, your Honor. Based on what I understand I have some people that are coming to the office at 2 o'clock.

THE COURT: How long will you be with Mr. Simon?

MR. SOVEL: Perhaps another f'teen minutes.

THE COURT: I have a proble . have to meet somebody promptly at 1.

MR. SOVEL: I would be willing, perhaps, cross examination can be interrupted and concluded tomorrow.

THE COURT: We will have to come back.

You go along and do it as fast as you can. Let's not worry about documents.

Q Mr. Simon, I show you an additional document which has been marked as Exhibit C for identification and ask you if that refreshes your recollection as to the identity of the document referred to in Exhibit A for identification?

A Yes, it does.

Q What is your recollection now?

A You'll have to ask me a question.

Q Did either Exhibit B or Exhibit C, are either of those copies of the document referred to in Exhibit A?

A Exhibit C is.

THE COURT: Are you offering Exhibit C into evidence?

MR. SOVEL: Yes,your Honor.

MR. COHEN: No objection.

THE COURT: Received.

xxx (NMU Exhibit C, received in evidence.)

Q At the meeting of, I believe it was, December 22, with Mr. Corletta and Mr. Nathanson and Mr. Cohen, did you advise them as to their obligations under their collective bargaining agreements with respect to sale and transfer of ships?

A Yes.

Q What did you advise them?

A I told them that the unions had to go along with the vessel.

Q Did you check the collective bargaining agreements at that time?

A No.

Q Did anybody?

A To the best of my recollection, no.

Q Did you advise them or suggest to them they had

an obligation to also give notice to the union of the transaction?

A I don't recall that being discussed.

Q You received a call some time around January 25th from Commerce advising you of the request of the union for arbitration?

A The call was from Mr. Nathanson.

Q As a result of that conversation you called the union, did you not, and spoke to Mr. Phillips?

A Yes.

Q Did Mr. Phillips tell you at that time that the union would seek an injunction in the arbitration?

A I don't recall.

Q I call your attention to your testimony on page 446 of the arbitration proceeding between Commerce and Vantage at the bottom of 446:

"Q Will you tell us what happened?

"A Well, we told them that they had this arbitration scheduled for the 8th and we were trying to explore with them ways of perhaps solving the situation, avoiding the arbitration and settling the problem. Every suggestion that we made they rejected. Their position was a simple one: That they would want these jobs and they were not about to give up these jobs, that they were not about to give them up to the

SIU and they would insist on their rights and were proceeding with the arbitration.

"At that point in fact in that conversation one of them, I can't recall which one, said that they would seek to enjoin the transfer of the vessel."

A I believe that's February 5th.

Q You recall that on that meeting?

THE COURT: Your question was different.

Q At that time?

A Yes.

Q At the meeting with Vantage on the 4th, wasn't the suggestion made by Commerce that if you can't solve this problem, let's cancel the contract and Commerce will sell the ship elsewhere?

A That suggestion was made. I would have trouble now recollecting whether it was made on February 4th. That suggestion could have been made on February 4th. It was certainly made.

Q Was it not ~~in~~re jected by Vantage?

A Yes.

Q They refused to cancel the contract?

A That's correct.

Q At the arbitration proceeding before Mr. Kheel, was it not conceded by Commerce that they had not obtained

undertaking required by Article I, Section 2 of the NMU collective bargaining agreement?

A I have no recollection of that.

THE COURT: It was obvious. I don't think we are getting anywhere. The man has to leave. I have to leave. It is very important I am out of here a little before 1 and I am not going to have this man brought back for this kind of questioning.

MR. SOVEL: They have gone into this question of no hearing.

THE COURT: It was obvious there was no undertaking. That was not the point he was bringing up.

Q Mr. Kheel said the antitrust issue was not before him?

A I have no recollection of it.

THE COURT: Anything else?

MR. SOVEL: Nothing else, your Honor.

THE COURT: You may step down.

We will adjourn until 2:15.

(Luncheon recess taken.)

AFTERNOON SESSION

2:15 P.M.

MR. COHEN: I call Mr. Mel Barisic.

M E L B A R I S I C, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. COHEN:

Q Mr. Barisic, are you affiliared with the National Maritime Union?

A Yes, sir.

Q What position do you hold with the NMU?

A Secretary-Treasurer.

Q When did you become Secretary-Treasurer?

A April, '73.

Q Would you just briefly tell the court how long you have been associated with the NMU and what positions you have held with it?

A About 32 years -- as a seaman, elected official in 1950; brought myself up from patrolman to acting agent; national representative; to vice president; to secretary-treasurer -- all elected jobs.

MR. COHEN: Your Honor, I request permission to examine this witness pursuant to Rule 43(b).

THE COURT: What is Rule 43(b)?

MR. COHEN: As an adverse witness, your Honor.

THE COURT: Well, I think that is obvious.

MR. COHEN: Thank you.

BY MR. COHEN:

Q Mr. Barisic, when is the first time that you heard of the proposed sale of the vessel Barbara from Commerce to Vantage?

A About '70, '71 -- somewhere around there

Q Do you know how you first heard of it?

A Yes.

Q How was that, sir?

MR. SOVEL: If your Honor please, these matters are all covered by the stipulation, paragraph 21. It shows when we learned of it and how we learned of it.

THE COURT: (After examining) I see-- NUM, in early January, 1971, learned of the pending sale of the vessel through trade publications.

Well, I do not want to spend a lot of time regulating this but, Mr. Cohen, just try to keep in mind what is in the stipulation. Anything that is in the stipulation you can simply refer to -- tell me about it by way of background. Do your best.

MR. COHEN: Your Honor, we recognize that this is

a judge's trial but I think these issues are very important.

THE COURT: I am sure you are going much farther than what is in the stipulation.

MR. COHEN: Thank you, your Honor.

THE COURT: All right.

Q Do you recall how you first learned about it?

A Yes, through Mr. Gene Spector of our research department.

Q Did Mr. Spector tell you orally?

A I think he sent a memo, if I recall.

Q Mr. Barisic, I show you a memo dated January 7, 1971, from Mr. Spector to yourself. Is that the memo to which you refer (handing)?

A (After examining) Yes, that is the memo.

MR. COHEN: Will you please mark this for identification.

(Memo dated January 7, 1971, marked Exhibit 11 for identification.)

xx

BY MR. COHEN:

Q Does this memo of the 7th refer to an attachment, if you recall?

THE COURT: What is the date of the memo?

MR. COHEN: January 7, 1971.

THE COURT: From whom to whom?

MR. COHEN: From Mr. Spector to Mr. Barisic.

THE COURT: Okay.

(Question read by the reporter.)

A I don't recall any attachments.

Q I show you a list with the heading "Maritime Association of the Port of New York, dated January 5, 1971, (handing).

Did you receive this document at any time?

A (After examining) Not that I recollect, no, sir.

MR. COHEN: Will you please mark this as Exhibit 12 for identification.

(List dated January 5, 1971, marked Plaintiff's Exhibit 12 for identification.)

xx

MR. SOVEL: Your Honor, I hope you don't mind my standing up here in order to hear better.

THE COURT: No.

BY MR. COHEN:

Q Did you discuss the memo of January 7, 1971, Exhibit 11 for identification, with anyone?

A Not at that time. I called the company up.

Q Did you discuss it with anyone within the NMU?

A Not at that time.

Q Not on January 7th?

A Maybe the next day or maybe in the afternoon when

I received the assignment. The first thing I did was get in touch with Commerce Tanker people.

Q Who did you speak to there?

A It was Mr. Pilalas.

Q And what was your conversation with Mr. Pilalas?

A I told Mr. Pilalas that he is violating our contract, he is violating our agreement, article 1, section 2.

Q What did Mr. Pilalas say to you?

A He said "Well, yes" -- "No" -- "I am not sure -- I am checking", something to that effect.

Q Did you say anything else to Mr. Pilalas?

A No, sir.

Q How did you know that Mr. Pilalas was violating, or that Commerce Tankers Corporation was violating article 1, section 2?

A Because of the memo I received from Mr. Spector.

Q Does it say anywhere within the terms of that memo that Commerce is violating article 1, section 2?

A Mr. Spector notified me that Commerce Tankers is selling two ships.

Q Yes, sir.

A That is when I called Mr. Pilalas, and I got back and -- he was in some kind of confusion. That is when I got ahold of our lawyers and sent him a letter.

Q The question is when you informed Mr. Pilalas that he was violating article 1, section 2? What information did you have at your disposal that indicated that Commerce was violating that section?

A The memo.

Q Which line of this memo indicates to you that Commerce was violating article 1, section 2?

A He didn't have to tell me; I know.

Q How did you know, sir?

A I was vice president in charge of operating enforcement.

Q Is there anything in the memo of January 7, 1971, that indicates whether or not Vantage Steamship Corporation had given a written undertaking in compliance with article 1, section 2 of the NMU agreement?

MR. SOVEL: Objection. I think the memo speaks for itself, for what it says.

THE COURT: Overruled.

A What?

Q Is there anything within the memorandum of January 7, 1971, that you had available to you that indicated whether or not Commerce Tankers had received from Vantage Steamship Corporation a written undertaking in compliance with article 1, section 2?

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A No. I just based myself on the question of the ships for sale -- the company's duty is to notify us. They didn't do it so I notified them to live up to the contract.

T2 Q Did you ask Mr. Pilalas if he had obtained from Vantage a written undertaking?

A No. I told you what was my conversation with Mr. Pilalas. It is a violation, article 1, section 2. The contract followed the ship.

He said, "Yes. No. Let me check."

This was confusion. That's the reason I sent a letter, to make sure there was a record to it.

THE COURT: Listen to Mr. Cohen's questions and limit your answers to those. It will save us a lot of time.

THE WITNESS: Thank you, sir.

Q Isn't it true that as of January 7, 1971, you knew that whether or not Vantage gave the written undertaking to have an NMU crew not undertaking would do the NMU no good at all, that upon transfer of the vessel to Vantage an SIU crew would have to go on the ship?

A I'm not interested in that. I want to protect my seamen.

Q Did you know thtt the transfer, irrespective of whatever Vantage said to Commerce, Vantage would put on an

SIU crew?

MR. SOVEL: Objection, your Honor.

THE COURT: Sustained.

Q Did you check on January 7th or thereabouts as to whether or not Commerce had ever agreed to article 1, section 2?

A Again, I have to repeat the conversation I had with the captain and Mr. Pilalas.

Q My question is this: Did you check whether or not Commerce had ever agreed to article 1, section 2?

A They never agreed. They wanted to send the ship to an SIU company.

MR. SOVEL: I do not think the answer is fairly responsive.

THE COURT: Let's have the question read again.

(Record read.)

A I checked when I called Mr. Pilalas. Again the answer is, "Yes. I am checking. I'm not sure."

This is the answer I got from Mr. Pilalas.

In turn, I notified our legal department. We drafted a letter and we sent it to Mr. Pilalas, I'm sure. Then the legal department took care of it all the way down the line.

Q We have referred to article 1, section 2. I show you

an agreement, a printed agreement, bearing the date June 16, 1969-June 15, 1972, stated to be between various tanker companies and the National Maritime Union of America AFL-CIO.

xx (Commerce Exhibit 13 marked for identification.)

Q (Continuing) In speaking of article, 1, section 2, are you speaking of article 1, section 2 of this agreement (indicating)?

A I'm talking in general. We had an understanding during negotiation of article 1, section 2 which we got the language from the MEBA.

Q When you say you had an understandng during the negotiations, who is "we" in that?

A NMU.

Q Whom did you have the understanding with?

A The company.

Q Commerce Tankers Corporation?

A The company. There was the lawyer Ed Silver. He represented the company.

Q He was the representative for the company?

A Right.

Q Do you know which company Mr. Silver represented?

A It is in the book. It is an independent company who did not belong.

THE COURT: I am not getting this.

* * *

don't want the record to be confused. However, I would appreciate it if the interference that Mr. Sovel is lending--

MR. SOVEL: I object to that.

THE COURT: Start in your questions. There will be no interference.

BY MR. COHEN:

Q Do you recognize this blue book?

A Yes.

Q Was this the contract between the National Maritime Union and various tanker companies in the 1969 through 1972 period?

A Yes.

Q Were all operators of ocean going tankers whose seamen were represented for collective bargaining purposes for the NMU bound by this agreement?

A Yes.

Q The identical agreement?

A Yes.

Q Including article 1, section 2 which appears within this agreement?

A Right.

MR. COHEN: And is contained in the stipulation, your Honor.

MR. SOVEL: It is a stipulated fact.

THE COURT: Please proceed.

BY MR. COHEN:

Q You referred a little earlier to an understanding you had reached with Mr. Silver. My question now relates to when you first arrived at that understanding with Mr. Silver.

MR. SOVEL: If your Honor please, it is a question of understanding about what?

THE COURT: Take it one step at a time. Why don't you wait, and I think Mr. Cohen will probably bring it all out. If not you can adduce it on your cross-examination or maybe I will ask a question or two.

A During the course of negotiations.

Q When did those negotiations take place?

A Some were June, July, some September.

Q In 1969?

A Yes.

Q At any of those meetings was anyone from Commerce Tankers Corporation present?

A I don't know.

THE COURT: Who is Mr. Silver? I think you said and I didn't get it.

THE WITNESS: Mr. Silver is the lawyer who was representing the steamship companies, who was doing

all the negotiations for the steamship companies, tankers.

THE COURT: Is it your testimony that Mr.Silver purported to present all the companies, steamship companies and tanker companies in the industry?

THE WITNESS: May I explain, your Honor?

There is a little confusion here. I can see that it is getting confusing. May I explain it?

THE COURT: Yes.

THE WITNESS: Ther are two sections. You have the Merchant Marine Institute down there which represents the freighters, and you have a tankers committee who represents the tankers.

THE COURT: Who represents the freighters? You said an institute?

THE WITNESS: Merchant Marine Institute.

THE COURT: You say there is some institute?

THE WITNESS: A tanker committee and a freighter committee, whatever it is.

The first meting, your Honor, was called and all the companies was notified, those who belonged to the MMI and those who don't, independent companies. They was all invited to a big meeting with Mr. Curran presiding. Quite a few people were there, quite a few companies, the companies who do belong to the MMI and companies who don'tbelong there.

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So there was everybody there, big and small companies, tankers freighters.

The proposal was set and to my recollection we had Hess Oil, people who don't belong to Mr. Silver's group. After that meeting we set up a meeting, come in every two or three weeks, and at some of the meetings there was independent companies and at some meetings some don't, but they are welcome to come. Mr. Silver was the spokesman for the company. Nobody objected. On many occasions we had at the meetings where Mr. Silver was presiding and you have companies who belonged to the MMI plus independent companies such as Commerce and Hess Oil and Trinidad Corporation, and whatever other company. There was the spokesman. This is traditional to the waterfront long before I come in the picture. There was always one spokesman and automatically when the contract was ratified and signed all the companies accept, those independent and those represented by Silver.

THE COURT: See if I am clear:

This was the summer of 1969. You have mentioned this MMI?

THE WITNESS: Merchant Marine Institute.

THE COURT: What was that institute?

THE WITNESS: This is a group. A company who belonged to this institute, Mr. Silver was the lawyer who

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represented them.

THE COURT: Was the Merchant Marine Institute both freighters and tankes?

THE WITNESS: Freighters, and then you have a tanker company too.

THE COURT: It was just freighters?

THE WITNESS: That's right. Freighters, and then you have the tanker committee.

THE COURT: Then you had a group that was composed of tanker companies?

THE WITNESS: Gene Conners was the man who was representing the tankers.

THE COURT: Do they call themselves a committee or what?

THE WITNESS: It is a tanker committee. I could find the name.

THE COURT: Were you heading towards one contract to bring both freighters and tankers?

THE WITNESS: That's right. The date of expiration is the same.

THE COURT: But one contract?

THE WITNESS: There is a different working condition between tankers and freighters. There is one contract but different working conditions. It is a different type of ship.

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THE COURT: You had to have some different provisions?

THE WITNESS: Yes.

THE COURT: And the expiration date was what?

THE WITNESS: The same.

THE COURT: Do you remember what it was?

THE WITNESS: June 16, 1969, and we went for three years to June of 1972.

THE COURT: Did you start out with one general meeting?

THE WITNESS: Yes, sir. At this particular meeting all the companies was there. I'm not sure again. I can't say if anybody from Commerce was there. It was a big meeting and all kinds of people were there. I know a lot of people who was from independent companies who were there too.

THE COURT: But you say that everybody was invited?

THE WITNESS: All the companies.

THE COURT: All the companies who had on the previous contract, right?

THE WITNESS: Yes.

THE COURT: You may proceed.

BY MR. COHEN:

Q I show you a copy of a letter dated March 28, 1969. It is addressed to "Gentlemen," and there is no addressee

shown. Is this the invitation for the first general meeting to which you just referred? It is from Mr. Curran.

A Yes, sir.

MR. SOVEL: If your Honor please, I will stipulate that that is the form letter that was used to send to all the companies to announce the opening of negotiations by the union.

xx (Commerce Exhibit 14 marked for identification.)

Q At any time prior to March 28, 1969, had the NMU held any negotiations with Mr. Silver concerning the extension of the collective bargaining agreement? Prior to the invitation, that general invitation, were there any negotiations between the NMU and Mr. Silver or any organization which Mr. Silver represented?

A Not to my knowledge.

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Q Do you know the phrase "the Miami meetings"?

A I wasn't there.

Q Do you have any knowledge or information, as you testify today, about prior meetings that the NMU would have held with Mr. Silver or anybody that Mr. Silver represented, prior to March 28, 1969?

A Maybe; it could be.

Q Anything could be Mr. Barisic. I am asking you if you have any knowledge or information about it.

A No, sir.

Q You have no knowledge about it?

A I know there was meetings. What kind of meetings, what the discussion was, after that was said -- to get a combined union, to have one negotiation going, no strikes involved and things like that -- try to keep the industry in good form, terms or basis.

MR. COHEN: Would you please read back the answer?

(Answer read.)

Q Do I understand you correctly, Mr. Barisic, you do know that there were meetings prior to March 28th between the NMU and Mr. Silver or some organizations that Mr. Silver represented?

A It was meetings between the unions.

Q Were any employers' interests represented?

A I understand it was Mr. Silver.

Q Was Commerce Tankers Corporation invited to that meeting?

A It was just Mr. Silver.

Q Just Mr. Silver?

A Yes.

Q And what was that decided at thosemeetings?

A Just what I said before.

Q That there would be some kind of combined negotiations?

A Yes.

Q That was decided between the NMU and other unions other than Mr. Silver?

A Talking in general.

Q Talking in general.

A To save the industry, no strikes.

Q And one of the things that the NMU agreed to in these prior meetings was to save the industry, that there would be no strikes, is that correct?

A That is part of it.

Q At the meeting did Mr. Silver agree with article 1, section 2, that it would be included in the NMU agreement?

THE WITNESS: Your Honor, I know that I have to answer "Yes" or "No" here. I don't want to get confused.

I am under oath.

A We are talking about two different things here. What discussion was held in Miami between the unions in order to save this sick industry is one thing, and what the entire agreement was that came up after June 15th -- there was meetings every day, seven days a week sometimes, and the language that you are talking about came from the MEBA agreement, and we felt if the officers had the privilege we do it we, as unlicensed seamen, were entitled to that kind of language, too -- and that was to Commerce -- that was intended -- it was the entire industry you are talking about.

THE WITNESS: Excuse me, your Honor, that is the best way I can express myself.

Q Do you have any knowledge whether or not there were discussions as to the pension funding provisions in the Miami meetings?

A I say, it was part of the discussions going on, but the main discussion started after June 15th.

Q Do you know how much money the employers agreed to pay to the NMU pension fund for the 1969-1972 period?

A I think it was thirty eight million -- somewhere around that.

Q Per annum?

A Per annum.

Q Was it, in the 1969 through 1972 period, Mr. Barisic, 44.3 million dollars?

A I don't think so -- somewhere around there.

Q Per annum. And was that agreed upon the Miami meetings?

A That I don't know.

Q From whom did you learn about the Miami meetings?

A In discussion about the meeting of June 16th.

Q Some time after June 16th you learned that there had been prior meetings between the NMU and other unions and Mr. Silver?

MR. SOVEL: Objection, if your Honor please. There are two different things being confused-- there is a meeting between -- among the unions, one meeting, and a meeting with Mr. Silver -- another meeting -- not a meeting with all the unions and Mr. Silver, and that is coming across a little bit confused.

MR. COHEN: I suspect, your Honor, that Mr. Sovel has just injected his own testimony into the record.

THE COURT: I heard it a little differently from Mr. Sovel.

I thought we had testimony about meetings in Miami before March 28, 1969, attended by unions and Mr. Silver; and

then he said that the main discussion on the NMU contract took place after June 15th, and he has already testified that Mr. Silver was present at those also.

Isn't that right?

THE WITNESS: Yes.

THE COURT: Okay, go ahead, Mr. Cohen.

MR. COHEN: I think there was a pending question.

(Record read by the reporter.)

MR. COHEN: I think the record is clear now. I will withdraw that last question.

BY MR. COHEN:

Q About when, to the best of your recollection, starting with these events in the summer of 1969, was the language of article 1, section 2 agreed upon?

A During that period of time.

Q Some time during that period of time?

A That is right.

THE COURT: During what period of time?

THE WITNESS: During the negotiations which started June 15th, June 16th, and all the way to the end.

We had many meetings.

Q Mr. Barisic, the blue book, which has been marked Exhibit 13 for identification, bears a date in January, 1971.

A Second printing.

Q And there was another copy -- I show you another copy of a blue book. Does that show the first printing (indicating)?

A First printing.

Q What is the date of that?

A February, 1970.

Q And is it accurate that the first time that the blue book was distributed to independents -- do you know what I mean by independents, Mr. Barisic?

A Yes.

Q The first time the blue book was distributed to independents was after February, 1970?

MR. SOVEL: Objection, your Honor.

A I assume --

MR. SOVEL: Objection, your Honor. This was a matter -- we have stipulated this. I do not think we can vary the stipulation -- it is number 14.

MR. COHEN: Your Honor, I would like to establish that this witness had knowledge with respect to the course of events.

THE COURT: I will overrule the objection.

(Question read by the reporter.)

A It was distributed to everybody. The independents had nothing to do with that. They all came under one contract.

Q With whom did you decide that they would all be part of one contract?

MR. SOVEL: Objection, your Honor. There is no such testimony that he decided.

THE COURT: Approach it a little slower.

b2 I will sustain the objection.

BY MR. COHEN:

Q Was this meeting in 1969 to require all employers who had collective bargaining agreements with the National Maritime Union to have the same contract?

A I don't get you. What do you mean by the same contract?

(Question read by the reporter.)

A Yes, except the tanker and freighter-- there is a differential between tankers and freighters.

Q Was it something that you discussed with Mr. Silver?

A We did not discuss it with anybody. We had negotiations going on for a long time. Every company was invited to come and attend any meeting regardless if they are independent or part of the committee -- and that was going on.

Q You say every company was invited to attend every meeting?

A Yes.

Q Other than the first general notice that went out, was any notice sent to any company on any of the meetings?

A The meeting date was set, if I remember correctly.

Q Where were these meetings held?

A On Seventh Avenue -- 36 Seventh Avenue.

Q Were any of the meetings held in Mr. Silver's office?

A No, not in 1969.

Q Excuse me?

A Not in 1969. All the meetings was held at Seventh Avenue -- 36 Seventh Avenue, at the National Maritime Union headquarters.

THE COURT: Prior to 1969 were there separate contracts between the NMU and different employers?

THE WITNESS: Well, like I say, your Honor, we had tankers' contracts, and we had freighters. Then we had Navy ships, which is different altogether. Before that we had Colliers -- I mean, carrying coal.

We had passenger ships, which is a different contract, different working rules, different working conditions, etc.

THE COURT: Let us just take tankers.

THE WITNESS: All right.

THE COURT: Before 1969 did you have one agreement covering all the NMU tanker companies or did you have separate agreements with each tanker company?

THE WITNESS: We had one tanker agreement.

THE COURT: What was the change? Was there some change that occurred in 1969 in having less contracts than you had before?

THE WITNESS: No. The contract expired in 1969, the same as it expires this year, 1975, and we are already prepared to talk to the companies, and the next meeting will be Monday, January 20th. Our present contract doesn't expire until June 16th or 19th, whatever it is, so we want to get ahead of it in order to prevent all kinds of troubles on the waterfront.

THE COURT: I got the impression from your question and answer that there was some change in 1969, to have one contract, whereas before there was something different, but it is not at all clear to me.

MR. COHEN: Your Honor, I believe the NMU has taken a different position on this different times --

MR. SOVEL: Oh, now!

THE COURT: Look, Mr. Cohen, it seems to me this is something so simple--

MR. SOVEL: That is right, it is simple.

THE COURT: -- and everybody in the room probably knows it but me.

What was your situation before 1969, as to how many contracts there were? Before 1969 did they have a separate contract with each tanker company?

MR. SOVEL: May I answer that?

THE COURT: Yes.

MR. SOVEL: I will be happy to do it, your Honor.

THE COURT: Yes.

MR. SOVEL: Your Honor, the union had a contract -- in the industry prior to 1969 -- it was not changed in 1969-- it was that you had a single contract, an industrywide contract for tankers, an industrywide contract for freighters, but the company signed their own separate agreement. In other words, we negotiated with all the companies to arrive at a uniform set of working conditions for tankers, a uniform set of working conditions for freighters; but when it came down to the actual signing of the contracts, the companies acted independently except for the companies represented by the Maritime Service Committee or the Tanker Service Committee, and this I would have to check because I am not completely sure.

THE COURT: And the Maritime Service Commission were the freighters.

MR. SOVEL: Yes -- that was the successor to the AMMI.

THE COURT: And then the tankers.

MR. SOVEL: The Maritime Service Committee was the successor to the American Merchant Marine Institute, which is AMMI.

You might have a contract signed on behalf of the tanker service companies as one document, with one signature --

THE COURT: Well, was it? We are dealing with tankers for the moment.

MR. SOVEL: Right.

THE COURT: Okay. Prior to 1969, according to your recollection, there was a negotiation of union terms, but each company signed its own contract, except for the companies covered by the tankers service committee.

Is that what you are telling me?

MR. SOVEL: Yes. I have to -- at this point I am a little confused on one thing in my mind, as to whether even the tanker service committee themselves signed it. I believe Mr. Silver, through the committee, would sign for them, but the independents all signed their own contracts separately.

THE COURT: I know that Mr. Sovel is not a witness--

MR. COHEN: Your Honor, I will take that representation as a fact.

THE COURT: That is the kind of thing I need to know from some source. I need to know that.

MR. COHEN: I think it is a fact that we can assume for the remainder of this examination, certainly.

THE COURT: All right.

MR. SOVEL: And there was no change on that in 1969, your Honor.

THE COURT: Okay.

MR. COHEN: I do not consent to the last.

THE COURT: But you would accept the first representation, namely, that each company signed its own contract except the companies covered by the tanker service committee--you would accept that.

MR. COHEN: Prior to 1969?

THE COURT: Prior to 1969.

MR. COHEN: Yes; I accept that to be accurate.

THE COURT: And if there is some correction on that, Mr. Sovel can give that to us.

Go ahead, Mr. Cohen.

BY MR. COHEN:

Q Mr. Barisic, do you know whether or not Commerce Tankers Corporation ever signed an agreement such as Exhibit

13 for identification?

A No, not to my knowledge. That is the job of the research department. I assume they signed.

Q You assumed?

A Yes.

Q Have you checked it at any time?

MR. SOVEL: Objection. I think he has answered the question. I think at this point we are reaching a point where he is having argument with the witness.

MR. COHEN: Your Honor, I just started on this.

THE COURT: I will overrule the objection.

Q At any time have you checked it?

A I just told you.

Q Is it that you assume it?

A I assume the research department did -- has the responsibility.

Q Do you know whether or not the NMU ever requested the independents, including Commerce, in 1969 and 1970 to sign off the blue book?

A Yes, the research department did.

Q How do you know that, Mr. Barisic?

A Because I know that the research department sent out contracts and agreements like that. It is part of their duty.

Q And requested people to sign?

A Yes.

Q And do you know whether Commerce ever signed it?

A I said before, I assume they were sent out to them.

Q Now on January 7, 1971, when you received the memo from Mr. Spector --

Excuse me, what was Mr. Spector's title on January 7, 1971?

A What?

Q What was Mr. Spector's title on January 7, 1971?

A He was in charge of our research department.

Q He head the head of the research department?

b3 A That is right, and he still is.

Q Was there any discussion whatsoever between you and Mr. Spector as to whether or not Commerce had ever signed off or been requested to sign off on the blue book?

A Not to my recollection.

Q None to your recollection?

A Right.

THE COURT: I do not understand why there is any question --

MR. COHEN: Your Honor, there is no question.

THE COURT: It seems to me that the matter of whether Commerce signed the blue book contract should be beyond any

dispute. The question of whether the union sent out specifically or anybody sent out specifically to Commerce for Commerce's signature should be beyond dispute. Maybe it isn't in the stipulation -- I don't know.

MR. SOVEL: Your Honor, may I make a statement without being accused of testifying? No one has as yet been able to locate the signed copy. There was testimony --

THE COURT: Any signed copies of that 1969 agreement?

MR. SOVEL: By Commerce-- the actual blue book, but there was testimony by Mr. Milton Pilalas in their arbitration proceeding that he had signed it.

THE COURT: Wait a minute. Let us start with the records.

Does the union have the contracts between the union and other people -- right?

MR. SOVEL: Yes.

THE COURT: Doesn't the union have copies of the contracts bearing whatever signatures were made?

MR. SOVEL: On many of the companies, yes, in our files, showing copies signed by the various companies.

THE COURT: And is there a book or document signed by a whole lot of companies, or is there an individual thing signed by the individual company?

MR. SOVEL: Normally my understanding is that

there is a file for each company's contract in which they have signed.

THE COURT: Each company having signed.

MR. SOVEL: Yes.

THE COURT: And there is no such document for Commerce -- right?

MR. SOVEL: Pardon me -- one moment. I want to check.

(Mr. Sovel confers off the record.)

MR. SOVEL: I am advised -- I will let Mr. Phillips explain this because he has been doing the work on this.

MR. COHEN: I object, your Honor. I am sorry. What is happening now is a dance around a very important issue.

THE COURT: Nobody is dancing.

MR. COHEN: Well, Mr. Sovel is dancing with you. He said maybe Mr. Phillips knows --

MR. SOVEL: I object to that.

MR. COHEN: -- and maybe somebody else knows. I have been on this case for four years, your Honor, and there is no signed agreement with Commerce Tankers. If there was, they would have had to produce it pursuant to the subpoena in the depositions, and they did not produce it.

MR. SOVEL: Now your Honor--

MR. COHEN: And there is no request ever went out from the NMU to Commerce Tankers for the blue book.

THE COURT: The only thing is, we are probably wasting more time than saving it.

But you are asking this witness about facts which to me are matters of record -- either the union files contain a signed contract by Commerce Tankers or they don't. If the union files do not contain the contract signed by Commerce, I assume none exist, or unless they have had a fire there, and if there is some form of -- if there were contracts sent out to companies for them to sign, I will assume there was an enclosure letter that there would be copies of those enclosure letters addressed to every company to whom such a request was made.

If that is the case, and if no such enclosure letter or copy thereof is contained for Commerce Tankers, I assume that none ever existed, unless there was a recent fire.

Now these are things that I do not see any reason why we have to have Mr. Barisic on the stand, asking him about it.

MR. PHILLIPS: Your Honor, may I be heard?

THE COURT: Yes.

MR. PHILLIPS: We do not have a blue book, a signed blue book in the union files -- period.

THE COURT: For what -- for anybody?

MR. PHILLIPS: Just the blue book. No, we don't have it for Commerce.

THE COURT: Okay. But you have it for others?

MR. PHILLIPS: Let me address myself to Commerce. We do have signed memoranda of understanding for various periods of negotiations.

What happened, your Honor, was that the first portion of the negotiations was completed -- that was the economic package that was sent out. We have a signed copy from Commerce as to their agreement with that.

Then other portions of the contract were agreed to. Memoranda was sent out and returned, signed by Commerce.

We do not have any specific blue books signed by Commerce, nor do we have any specific signature by Commerce with respect to artiel 1, section 2.

THE COURT: Was there a memorandum of understanding relating to that portion of the contract involving article 1, section 2?

MR. PHILLIPS: No, your Honor.

THE COURT: Then there was none sent to anybody?

MR. PHILLIPS: None, no.

THE COURT: Let me just start again.

According to what you say, during the negotiations there were various memos of understanding that were gotten

up at different stages.

MR. PHILLIPS: Correct.

THE COURT: And there was a memorandum of understanding about the economic package.

MR. PHILLIPS: That is correct.

THE COURT: And that was sent out, among other people, to Commerce.

MR. PHILLIPS: Yes, your Honor.

THE COURT: And Commerce signed it.

MR. PHILLIPS: Yes, sir.

THE COURT: And you have a copy of that?

MR. PHILLIPS: Yes, your Honor.

THE COURT: Okay.

Now as far as article 1, section 2 is concerned, at whatever stage of the negotiations that occurred, there was another memorandum of understanding.

MR. PHILLIPS: That is correct, your Honor.

THE COURT: Signed by anybody.

MR. PHILLIPS: Correct,your Honor.

THE COURT: Or presented.

MR. PHILLIPS: Corrct, your Honor.

THE COURT: So the only thing embodying article 1, section 2 was the final blue book.

MR. PHILLIPS: That is correct, your Honor.

THE COURT: Now you have contracts embodying the blue book -- the final blue book terms signed by a number of companies.

MR. PHILLIPS: Correct, your Honor.

THE COURT: But not Commerce.

MR. PHILLIPS: That is right. However, as to that, I believe the head of Commerce, the president of Commerce, Mr. Pilalas testified by way of testimony --

THE COURT: But you do not have any documents which you can produce.

MR. PHILLIPS: No.

THE COURT: Okay. Now in the case of any of these companies do you have letters to them or copies of letters asking them to sign the final blue book contract?

MR. PHILLIPS: Yes, your Honor.

THE COURT: Do you have any copy of letters addressed to Commerce?

MR. PHILLIPS: No, your Honor.

THE COURT: Okay. Well, at least we know what the documentation is.

MR. COHEN: I am sorry, but did you say you had those letters?

THE COURT: They have letters to some companies but not Commerce.

MR. COHEN: Let us establish this correctly.

We have lawyers here talking as if they were witnesses.

Mr. Phillips, is it your understanding that letters were sent out for people to sign the blue book?

MR. PHILLIPS: That is my recollection.

MR. COHEN: Well, I think it would help this case an awful lot if Mr. Sovel and Mr. Phillips would bring those letters to the court tomorrow.

THE WITNESS: What kind of letters are you talking about?

MR. COHEN: The letters requested of the independents to sign off the blue book.

THE COURT: I take it you are requesting production.

MR. COHEN: Yes.

THE COURT: Okay, you request it.

Go ahead.

MR. COHEN: I will say, your Honor, that you have shortened my examination of this witness considerably -- I think it has helped in this way.

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THE COURT: Okay.

MR. COHEN: I would like to have marked for identification a series of communications between the National Maritime Union and Commerce.

xx

(Series of communications marked Exhibits 15 to 21

for identification.)

MR. COHEN: Perhaps Mr. Sovel, we can shorten this up by stipulating as to the authenticity of the documents that were produced to me out of your file.

MR. SOVEL: If you will identify them I will state whether I agree or not, according to the number.

MR. COHEN: Exhibit 15 for identification is a memorandum of understanding, dated a blank date in July, 1969, between the NMU and Commerce Tankers Corporation, signed on behalf of the NMU by Joseph Curran; signed on behalf of Commerce Tankers by L.H. McChesney, being a four-page document containing two appendices, A and B.

MR. SOVEL: No objection, your Honor.

THE COURT: This is exhibit what?

MR. COHEN: 15, your Honor.

THE COURT: All right, Exhibit 15 is received.

xx (Exhibit 15 received in evidence.)

THE COURT: May I see it?

MR. COHEN: Would your Honor like us to proceed while you look at it?

THE COURT: Just tell me what this is.

MR. SOVEL: This is the memorandum which reflects the economic package that was negotiated, and then further negotiations took place.

THE COURT: This is the memorandum of understanding as to the economic package?

MR. SOVEL: Yes.

THE COURT: I have it.

Go ahead.

MR. COHEN: Exhibit 16 is a one-page transmittal letter from Joseph Curran, President, to -- it appears to be separately typewritten on a form letter to Robert Rae, V.P. of Commerce.

MR. SOVEL: Your Honor, I have no objection to the admission of this document.

To clarify it further, the original letter was a form letter, with no name of the addressee put on the form letter, and then separate letters were sent out, with the names of each company to whom it was sent.

It was the transmittal letter of the document, of Exhibit 15

MR. COHEN: So stipulated.

Exhibit 17 is a one-page letter from Goodwyn Commerce Tankers Corporation to the National Maritime Union, attention of Mr. Curran, President, returning executed copies of Exhibit 15 in evidence.

MR. SOVEL: Right. No objection.

THE COURT: Commerce Exhibit 17 is admitted.

xx (Exhibit 17 marked in evidence.)

MR. COHEN: Exhibit 18 is a letter signed by Mr. Mel Barisic to Mr. Rae at Commerce Tankers Corporation, enclosing copies of new contract language.

Any objection?

MR. SOVEL: I have no objection to this letter.

MR. PHILLIPS: Will you give the date of the letter?

MR. SOVEL: The date of the letter is August 5, 1969.

THE COURT: Exhibit 18 is received.

xx (Exhibit 18 marked in evidence.)

MR.SOVEL: Just a minute, your Honor. The letters reflect the transmittal of contract language. The contract language is not included in the exhibit.

THE COURT: Okay.

MR. SOVEL: I think that should be clear in the record.

MR. COHEN: That is correct.

THE COURT: All right.

MR. COHEN: Exhibit 19 is a one-page letter dated August 18, 1969, from Mr. Curran, President of the NMU to Mr. Rae, V.P. of Commerce Tankers Corp., again enclosing new contract language, and again the contract language is not being offered at this time.

MR. SOVEL: I think, Mr. Cohen, we can also agree

that it is the same type of form letter, with the name of the company typed in in the address portion, but the letter otherwise being a form.

MR. COHEN: Gladly.

THE COURT: Okay, received.

xx (Exhibit 19 marked in evidence.)

MR. COHEN: Exhibit 20 is a one-page letter from Mr. Curran to Mr. Rae again, dated September 30, 1969, enclosing an agreement covering tankers carrying grain.

Any objection, Mr. Sovel?

MR. SOVEL: No.

THE COURT: Received.

xx (Exhibit 20 marked in evidence.)

MR. COHEN: Exhibit 21 is a letter from Mr. Goodwyn of Commerce returning to the NMU two executed copies of the aforementioned agreement covering tankers carrying grain. The letter is dated October 1, 1969, and the agreement which is attached to this letter has been signed by Mr. Curran, witnessed by Mr. Barisic, and signed on behalf of Commerce Tankers by Mr. McChesney and witnessed by Mr. Goodwyn.

MR. SOVEL: No objection.

THE COURT: 21 is received.

xx (Exhibit 21 received in evidence.)

THE COURT: I take it that the agreement covering

tankers carrying grain is not the agreement that is applicable to the Barbara.

MR. SOVEL: Oh, yes, it would be to the extent that that vessel might ever carry grain -- it would become applicable.

THE COURT: I thought Mr. Phillips told me when I was asking him that there was no --

MR. PHILLIPS: It was carrying grain from time to time.

THE COURT: The point I was asking Mr. Phillips-- and I guess there is nothing inconsistent -- I asked Mr. Phillips if there was any document in the union hands showing that Commerce signed the blue book contract, and any letter sending the blue book contract to Commerce requesting that they sign it. The answer was "No".

There is nothing inconsistent, I take it, in 20 and 21 as to that. Am I right?

MR. PHILLIPS: That is correct.

MR. SOVEL: May I remind your Honor that there is no question that the blue book was printed up after these documents were completed. The blue book was not in existence at that time.

MR. COHEN: That is true but that is not a fact that has always been known in these proceedings.

THE COURT: Wait a minute. Let us take tankers carrying grain. There is Exhibit 21. Is it an agreement as to tankers carrying grain -- right?

MR. SOVEL: Yes.

THE COURT: Now the blue book, when it came along, would cover tankers carrying grain, I take it.

MR. SOVEL: I would imagine, your Honor, that that provision is incorporated in the final blue book.

THE COURT: So what was this -- just a preliminary stage?

MR. SOVEL: That is right.

THE COURT: Oh, I see.

MR. SOVEL: They were going along, your Honor.

THE COURT: This is just another preliminary stage in the negotiations.

MR. SOVEL: Right.

THE COURT: Okay.

MR. SOVEL: Well, preliminary may not be an accurate description.

THE COURT: It is part of the terms of the ultimate contract.

MR. SOVEL: Yes.

THE COURT: So where it says "agreement covering tankers carrying grain", this is really part of the terms

of the ultimate agreement.

MR. SOVEL: Yes, your Honor.

THE COURT: Okay.

We will take a short recess.

(Recess)

BY MR. COHEN:

Q Mr. Barisic, do you know what the letters SIU stand for?

A Yes.

Q What is it?

A Seafarers International Union.

Q Is that a rival organization of the National Maritime Union?

A I don't know.

Q Are they in the same general purpose organization as you?

A They are representing the unlicensed men, yes.

Q Do the NMU and SIU have a history of dealings in the maritime industry?

A Yes.

Q The SIU represents the same classes of personnel that you represent?

A Yes, sir.

Q Has the relationship been consistently cordial over the last twenty years?

A No.

Q How would you describe the relationship?

A We represent unlicensed seamen and they represent unlicensed seamen. There is always some kind of friction between a contract when it comes up. Our contract is higher

than the SIU contract. Our seamen have better standards than the SIU.

Q Wasn't there an extensive rivalry between the SIU and NMU for the representation rights of American seamen on American flag vessels on or about July, '69, and predating that time?

A There is a rivalry all the time. I don't know which case you mention.

THE COURT: This is pretty obvious.

MR. COHEN: I think it is obvious too, but it is denied in the reply.

THE COURT: He has admitted it.

THE WITNESS: I do not deny it.

THE COURT: There was a rivalry, right?

THE WITNESS: Yes.

THE COURT: Of course. Long before my time.

Q And during your time?

A Yes, sir.

Q Directing your attention now to Commerce Exhibit 18 in evidence, do you recall signing that letter or letters of that type on or about August of 1969?

A It is my signature.

Q Do you have any reason to doubt that that was sent by you at the time?

A No.

Q Do you see the language in there "Agreed to by the Tanker Service Committee"?

A Right.

Q Did you write that language?

A This is a form that we had at that time.

Q Who drafted the form?

A This would be drafted by our research department.

Q Why was it important that the language had been agreed to by the Tanker Service Committee?

A Because the committee man is there which is represented by Jim Connors and Mr. Silver, which I explained before. Also, you just presented all kinds of statements to his Honor and that's another one of those where it says keeping in touch on the basis of producing during the the negotiations and this is a letter that was sent to Commerce Tankers.

Q Do I understand you to be saying that you were advising Commerce of the progress of negotiations by this letter, 18 for identification? Did Commerce have any choice whether or not to accept the provisions which were transmitted to it with Exhibit 18?

A They had all kinds of choices. They could send a representative to the negotiations, which they were invited.

Not only Commerce Tankers, but everybody.

Q With respect to the provisions submitted to Commerce with the letter marked 18, in evidence, dated August 5, 1969, on or after August 5, 1969, did Commerce have any choice as to whether or not to accept those provisions?

MR. SOVEL: Objection, your Honor.

The question has been answered.

THE COURT: I thought he did.

Didn't you say in your view they did have a choice?

THE WITNESS: Yes, sir.

THE COURT: May I interrupt here. As I understand it, someone subpoenaed the Maritime Administration. Who did that?

MR. COHEN: We did.

THE COURT: Did you subpoena a witness and documents or just documents or what?

MR. COHEN: A witness and documents.

THE COURT: When was that subpoena returnable?

MR. COHEN: Tomorrow morning, your Honor.

THE COURT: Do you need those documents tomorrow?

MR. COHEN: I have stated in several conversations with attorneys for the Maritime Administration that I would be glad to fix a date acceptable to them and plan accordingly.

* * *

BY MR. COHEN:

Q Mr. Barisic, was Commerce Takers Corporation requested to approve or acquiesce in or sign off on notice of the provisions transmitted to them with the letter of August 5th?

A The letter of August 5, 1969, was not sent only to Commerce Tanker. It was sent to all the independe companies automatically, in order to keep them abreast of what was going on during the negotiations, and again I represent that everybody was involved, everybody was invited, and if Mr. -- Commerce Tanker objects to it, they have a right to object. They have a right to say "Look, we don't agree with that and we will discuss that further."

Q With respect to any of the provisions referred to in the letter of August 5, do you have any knowledge now that any independent company objected to any of those provisions?

A No, sir, none of them objected.

THE COURT: When you said Commerce had the right to object, are you saying that Commerce had a right to object after they got the letter of August 5?

THE WITNESS: They have the right to object by sending their own representative, their own labor relations man, whoever they are, to come up here and say, "Look, I

received this letter, let's talk about the port time and discharge pay-off and sign-on," whatever it is.

"We don't agree to this." They have a right to object. Sure, any company, including even the people, company who is represented by the lawyer.

THE COURT: In other words, it wasn't final as of that time?

THE WITNESS: No, sir, because the final, we say here we still continue to meet here to finalize the entire contract.

THE COURT: All right.

Q With respect to the provisions transmitted with the letter of August 5, wasn't it final at that date?

A This particular item of the contract, yes.

Q Those particular items were final on August 5?

A Yes, sir.

THE COURT: Now wait a minute. I don't want any confusion here. I'm talking about the provisions sent with the August 5 letter. Are you with me?

THE WITNESS: Yes.

THE COURT: All right. Now my question was, that letter says, if you look at it, that those provisions have been agreed to by the committee, right?

THE WITNESS: Right, sir.

THE COURT: And it says that Commerce is expected to start performing those conditions right away, right?

THE WITNESS: Yes.

THE COURT: All right.

Now, in view of that, I am asking you whether Commerce had any right to object to those provisions at that point. Do you understand my question?

THE WITNESS: Yes, your Honor.

THE COURT: All right. Now, what is the answer?

THE WITNESS: And the answer is yes, they have the right. They could very well send this letter back and say, "We don't agree with that port time or discharge or sailing board or transportation." They accept that. Like I say, like I mentioned some time back, your Honor, this is traditional that an independent will follow suit whenever the tanker committee or the other committee on freighters will agree, and they will follow automatically with that decision. This is going back from years and before my time.

Q What would happen if commerce objected?

MR. SOVEL: Objection, your Honor.

THE COURT: No, I will overrule it.

A What would happen? We would be willing to discuss, negotiate with them. If necessary, to negotiate with them alone.

Q You would have?

A Yes, your Honor -- I mean -- yes.

Q In the period of 1969, was there any occasion in which you sat down with any independent company to negotiate separately with that independent company any term of the contract?

A I don't recall that we had any separate negotiations. No, I don't think there was any.

Q Was Commerce asked to indicate in any way, and by Commerce let me expand my question, was Commerce or any other company asked to acquiesce or show its approval of the provisions transmitted to them by the letter of August 5?

A Well, I have to represent again, this Commerce, I am not interested in Commerce. I am interested in the industry. I do not represent the seamen only in the Commerce. I represent the seamen in the United States Line, Mooremac and every other company.

Again, I got to represent myself. They have a right to discuss. They have the right. They can call me on the phone, whoever it is, "Mr. Barisic, I don't agree in the port time; and then let's discuss."

Q Isn't it part of your understanding, Mr. Barisic, that when you were talking to Mr. Silver you were agreeing on industry-wide provisions?

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A That's right.

Q That would apply to the whole industry?

A That's right.

Q And there was no choice for independents, isn't that correct?

A Why not? They was invited to come up there --

Q Otherwise --

A -- and object when they want to.

Q All right. Now, I think we have cleared ourselves up a little bit.

MR. SOVEL: If your Honor please --

THE COURT: Just a minute.

Q Otherwise, than coming up and participating in the negotiations that Mr. Silver was participating in, did the independents have any right to object?

A Of course they have a right to object.

Q Are you saying now that you could have and would have varied the clauses on an independent basis by negotiating with the independent companies?

A I didn't say that. I said that if Mr. Silver was negotiating for you, the company that was alongside of it had a right to object to Mr. Silver, "We don't go along with this kind of agreement in port time or transportation clause."

Q So you're saying Commerce had notice of one meeting and it could have come to the other meetings and it could have tried to participate; is that correct?

MR. SOVEL: Objection, your Honor. I think it has been asked and answered so many times already.

MR. COHEN: Your Honor, this is an examination pursuant to Rule 43(b). I object to Mr. Sovel interfering.

THE COURT: The only thing I say, Mr. Cohen, let's just not try to repeat the same question. I mean, if you want to get it a little different way, because otherwise we won't make any headway.

MR. COHEN: I think the essence of the difference here is whether or not the participation rights that Commerce had were before the agreement was reached with Mr. Silver or after.

THE COURT: Just to try to break something of a log jam, maybe this isn't the way to approach it, but let me try something:

Suppose one independent had come in and said "Look, we don't like Article I, Section 2, and we won't sign an agreement with that provision in it."

Well, what you're telling me, they'd have a right to say that, right?

THE WITNESS: Of course they have a right to say

that.

THE COURT: And if they won't sign a contract, they won't sign a contract, right?

THE WITNESS: Yes.

THE COURT: But let's suppose they had said, "We don't want Article I, Section 2, and we won't sign this contract that everybody else is signing."

Wouldn't there be some economic or labor relations consequences in them standing out alone? Would there?

THE WITNESS: Yes, there would be.

THE COURT: What would those consequences be?

THE WITNESS: Well, we will feel, number one, being unlicensed seamen to be discriminated because they agree with the officer unions, and we only copy the language of the officer unions to protect the unlicensed seamen.

THE COURT: All right, so you wouldn't approve of them holding out, right?

THE WITNESS: That's right.

THE COURT: And what would you do then?

THE WITNESS: Well, if necessary, then we will call a strike.

THE COURT: All right.

THE WITNESS: Or go to arbitration.

THE COURT: You said unlicensed. Do you represent

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unlicensed?

THE WITNESS: Unlicensed.

THE COURT: All right, I guess I didn't hear that right.

THE WITNESS: See, we have unlicensed seamen and we always try to get what the licensed got. If it's good enough for them it's good enough for us.

THE COURT: All right.

BY MR. COHEN:

Q Mr. Barisic, if Commerce or any other independent company would have objected to any of the provisions transmitted to them with the August 5th letter, wouldn't you or other representatives of the NMU have informed them that you had made up your mind to make up only one contract and that that was part of the deal you had made with Mr. Silver?

THE COURT: That's really speculation.

A I don't know.

THE COURT: I have elicited from him the response which I am sure is obvious, that if one man held out, you heard the testimony, they would object, and they would try to do what they could to press the employer, dissenting employer to sign, ultimately striking him, so that is where we are.

MR. COHEN: Your Honor, I think this witness gave

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somewhat different testimony in his deposition than he has given here.

THE COURT: All right.

MR. COHEN: I am trying to get at that .

THE COURT: All right.

Q Do you remember testifying previously, Mr. Barisic?

A I spent all day with you. There is a lot of things I don't remember because you are confusing a lot.

Excuse me, your Honor.

Q Did you recently have an opportunity to review your transcript of the deposition?

A Yes, when I got time, yes.

Q Last week --

MR. SOVEL: Your Honor, can't we just get a question asked?

THE COURT: Let's go a little faster, please. Let's not play with this.

Q Do you recall testifying at page 180 of your deposition with respect to the same issue we have been discussing today:

"Q In your opinion, if there would be such a protest what position would the NMU take?

"A Let them come up and discuss it; and we have to

explain that you can only make one contract when referring to any section of the contract except for manning like I mentioned before."

A Yes.

Q And wasn't that your understanding in 1969 that there could be only one contract?

A That's right.

Q An industry-wide contract?

A An industry-wide contract and therefore I answered the question of the letter, they have a right to complain and we have a right to fight. We have a right to go to arbitration,and if necessary, to call a strike.

Q Mr. Barisic, referring back to the pension provisions that we were referring to before, on what basis was the NMU pension trust to be funded over this three-year period, '69 through '72?

A Well, we had a couple. We had man-days provisions.

Q A contribution by each employer on a per man per day basis?

A That's right.

Q Was there an annual guaranteed amount? I think we established that before, right?

A Well, the annual guarantee, I'm sure came after that. I think that come in in '72. In '69 I think it was

* * *

EXCERPTS OF TRANSCRIPT JANUARY 14, 1975

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO
vs.
COMMERCE TANKERS CORP.
vs.
VANTAGE STEAMSHIP CORP
--
VANTAGE STEAMSHIP CORP.
vs.
NATIONAL MARITIME UNION OF AMERICA, AFL-CIO

January 14, 1975

--

M E L B A R I S I C, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. COHEN:

Q Mr. Barisic, you testified yesterday that the NMU represents unlicensed seamen?

A Yes, sir.

Q Are there other classes of employees on tankers?

A Officers.

Q Are there various organizations that represent officers?

A Yes. You have the MEBA and the MMP.

Q Let's start with MEBA. That's the Marine Engineers Beneficial Association?

A Yes, sir.

Q Is there more than one MEBA organization?

A The main one is District 1 MEBA.

Q Is there another one?

A District 2.

Q They are not competing organizations?

A I don't think so. I don't know. There are two MEBA, District 1 and District 2.

Q You say Mr. Lamy, who was just in the courtroom?

A Yes.

Q He is from MEBA?

A Yes.

Q Do you remember testifying yesterday that the NMU copied this provision restricting transfer?

A Yes.

Q Is it from the MEBA that the NMU copied it?

A Yes.

Q Who is the president of the MEBA?

A Jesse Calhourn.

Q Now, you mentioned some other initials -- MMP.

A That is the Masters, Mates and Pilots.

Q They represent the Masters, Mates and Pilots who are employed on vessels?

A Yes.

Q Is there a competing organization for Masters, Mates and Pilots?

A I think there is. On the west coast they got some.

Q Did you ever hear of the Brotherhood of Marine Officers?

A Yes.

Q Is that BMO?

A Yes.

Q Is that like the MMP?

A They are mates and engineers. They got one union.

Q So they are sort the same as MMP and MEBA put together?

A Yes.

THE COURT: They are called what?

THE WITNESS: Brotherhood of Marine Officers.

THE COURT: Do I understand they are a competing organization which competes with the MEBA and the MMP?

THE WITNESS: I don't say they compete. They represent both Masters, Mates and Engineers, one union.

THE COURT: They have different members than the MEBA and the MMP?

THE WITNESS: Yes.

THE COURT: They represent the same classes of personnel as those other organizations, namely, the MMP and the MEBA?

THE WITNESS: Yes.

Q Are there radio officers on vessels?

A Yes.

Q Are radio officers represented by the same organization?

A By their own union.

Q Is there more than one radio organization?

A Yes.

Q What is the radio officers' organization?

A Well, the American Radio Association and the ROU.

Q Radio Officers Union?

A Yes, sir.

Q Did this setup exist as it is today in 1969?

A Yes, more or less.

THE COURT: Did you give us the name of just one officer's union or are there two?

THE WITNESS: Two, the American Radio Association and the ROU, Radio Officers Union.

THE COURT: Do these compete?

THE WITNESS: No, they represent the same type.

Q Do you remember testifying yesterday about some meetings in Miami?

A Yes.

Q Were some of these meetings only between union people?

A There were union people there.

Q Were there any meetings between employee organization people without any employer organization people being present?

A I am sure there was.

Q I'm sorry. I didn't hear you.

A I am sure there was.

Q Were you presently present in any such meetings?

A No. I am not sure when I was there. But if I was there where the meeting was, there were the rest of the unions.

THE COURT: I didn't hear you.

THE WITNESS: I was there, I am sure I was there.

THE COURT: You were in Miami?

THE WITNESS:Yes, in Miami.

THE COURT: When were you in Miami that you are speaking of?

THE WITNESS: In '68, I think. Some time around there.

THE COURT: You were in Miami with whom of your union?

THE WITNESS: I was down there. I don't know if it is the same. I don't recollect if it was the same time the meeting was going between the unions. I was down there

when Mr. Curran was there and Mr. Wall.

THE COURT: Well, Mr. Cohen, you are asking the witness questions, but this is not clear to me.

MR. COHEN: I will continue with the witness.

Q It's not clear to me, either, Mr. Barisic, whether your testimony is that you were present at meetings at which only employee organization people were present or that you were present at meetings at which employee organization people were present together with other people.

A I don't know other people. I don't understand you, either.

THE COURT: I don't understand the question.

THE WITNESS: I don't understand it, either. I was in Miami, Florida, at that time. Maybe I attended one meeting, and the rest I have something else to do. I was not there for the purpose of that particular meeting called by whoever called the meeting.

Q At any meeting that you attended in Miami was the subject of restrictions on sale and transfer type clauses discussed?

A I don't recollect.

Q At any meeting that you attended in Miami was the subject of pension guarantees discussed?

A Not when I was there.

Q At any meeting that you attended in Miami was the subject of stability in the industry discussed?

A Yes.

Q What meeting was that?

A I don't know what day it was. I recollect briefly discussion should the unions, the maritime unions get together and have one contract, forget this "me, too," let's get together so we can get through without any strikes, the industry is kind of sick, cannot afford another strike. That is all I recollect on the particular meeting I was and then I left.

Q Were any employer representatives at this meeting?

b2

A I don't think so, no, not in the meeting I was.

Q What is your best recollection as to who called that meeting?

A I don't know. Maybe Joseph Curran. It could be. I'm not sure.

THE COURT: What do you mean by the "me, too."

THE WITNESS: "Me, too,"your Honor, is one thing that really ruined this waterfront, to be very honest, because unions, the licensed men have something, then the other unions want the same thing. Then we fought as unlicensed seamen. We were being left behind. We were working on the same ships alongside of the engineer. So we come up with the

me, too. Whatever you give to the mates, whatever you give to the engineers, you better give us, and that is what the opening of the meeting Mr. Joseph Curran says this "Me, too. Creature comfort. We don't have two pot systems. Whatever you give the licensed people you are going to give to the unlicensed." And that accomplished everything, better quarters, time off -- it was about 13 or 14 things was put on the table at the negotiations that the officers had, such as port time, time off.

THE COURT: You say this ruined the waterfront. What ruined the waterfront? The lack of the same treatment?

THE WITNESS: That is right, because it was creating friction on board ships, it was the cause of strikes. So to eliminate the "Me, too," we wanted them to give us all these things that the licensed men have and forget the "Me, too." There were 13 items that we put on the table.

THE COURT: So Mr. Curran was telling these other unions that --

THE WITNESS: Let's get together.

THE COURT: -- get together and request the same things across the board for all the people.

THE WITNESS: Right.

THE COURT: Let's take a short recess.

(Recess)

THE WITNESS: Your Honor, you asked me for clarification of "me too." I didn't really finish it up.

THE COURT: Go ahead.

THE WITNESS: The "me too" that I wanted to clarify, your Honor, started in 1965 between the Officers union and the radio operators. They create a "me too" mess in the waterfront.

Then in '67 and '68 and finally in '69 the unlicensed personnel, the NMU, my union, our union, brought the thing into the table, at the negotiating table, to eliminate this "me too," and get what they have to give to us as unlicensed seamen.

THE COURT: Thank you.

Proceed.

BY MR. COHEN:

Q Mr. Barisic, you said there were thirteen items.

A Yes, sir.

Q You referred to a piece of paper in your pocket.

A Yes, sir.

Q Can we see that?

A Here (handing).

MR. COHEN: Please mark this.

xxx (Commerce Exhibit 22, marked for identification.)

Q This paper begins "The following is a list of

items presented for collective bargaining."

A Yes.

Q Do you know when these items were first presented?

A Right at the beginning of the negotiations or in between there somewhere.

Q When you say beginning of the negotiations, you are referring, of course, to the NMU negotiations?

A Yes.

Q You established when you testified yesterday that there was one big meeting at the Belmont Plaza Hotel?

A Yes, sir.

Q Is it your testimony that these items were presented for negotiations subsequent to that meeting?

A Yes. That was after the Belmont Plaza.

THE COURT: The Belmont Plaza is a hotel in New York.

THE WITNESS: Yes, sir.

Q I asked you questions before about some meetings in Miami. You said that Mr. Curran was talking about "me too," and there were, if I understood your testimony correctly, some items put on the table?

A Yes.

Q Was it substantially the same items that are presented in 22 for identification?

A This is more of the copy of the items which the

licensed union had and we wanted.

Q What I'm trying to ascertain from you, when Mr. Curran was talking about this same subject in the Miami meetings, did he raise these items in detail?

A No, sir. I said that before. A couple of items was raised, the question of unity has to be maintained on the waterfront.

Q You recall being present, personally present, at the meeting Mr. Curran was talking at?

A One meeting, vaguely.

Q Was Mr. Silver present at this meeting?

A At that particular meeting, no.

Q Was any person affiliated with the Tankers Service Committee or the Maritime --

A This was strictly a union meeting, that meeting I attended. Like I say, vaguely, I remember. I was there, at that particular meeting.

Q Which unions were represented besides the NMU?

A There was the MEBA, the radio operators union.

Q Which one?

A ARA.

Q Not the other one?

A No.

I think the Masters, Mates and Pilots was there.

That's all I can recollect.

Q Was there any discussion at this meeting of the sale and transfer clause?

A Do I have to repeat again? I told you before what was said. It was strictly on the basis of unity at the waterfront. That was the purpose of the meeting.

THE COURT: All right. You testified about that. We won't have repetition.

Q When did you first learn that the NMU would be specifically seeking a sale and transfer type clause?

A We discussed that between myself and the lawyers and our research department. We discussed some other things, the way we are doing right now, to get ready for this negotiation coming up in the next couple of months. We discuss everything. We try to get the moon, if possible.

Q I'm asking you about one specific clause.

If you can recall, Mr. Barisic, when was the first question as to whether the NMU would seek a sale and transfer-type clause?

A Could be '67, '68, '69?

Q You don't recollect?

A During the discussion between myself and the research department and the legal department. The research department had a contract from every union.

MR. COHEN: Your Honor, there was a request yesterday for the production of certain documents by the NMU. I wonder if they have them with them today. There was a request for the production of the blue book Mr. Phillips represented went out.

MR. SOVEL: I do not have that document with me as yet. I will try to have it this afternoon.

THE COURT: Go ahead.

MR. SOVEL: If your Honor please, may I interject one thing? We will get people to dig out documents, but since in their answer they have admitted the execution of the contract, I fail to see what the issue we are pursing with this thing is?

MR. COHEN: Your Honor, I think we are pursuing a very, very clear issue.

We admit the existence of a contract imposed upon us by the NMU having reached agreement with other persons. The fact that neither Commerce nor any of the other independents was offered an opportunity to accept or reject the clause is the essence of the antitrust violation that was committed.

THE COURT: Can you answer me this, and I have not looked at the pleadings -- I'll look at them right now if you want me to -- as a matter of contract law and

putting aside for the moment labor law problems or antitrust problems, what is your position as to whether Commerce Tankers was bound by the 1969 collective bargaining agreement with the NMU?

If that's not a fair question, tell me so.

MR. COHEN: I understand your Honor's question. I hesitate to get into the full impact of the issues that arise with respect to both the labor law and the antitrust law but understanding your Honor's question directly relates solely to the contract as a matter of contract law, I feel that once Commerce received the booklet, had knowledge that the NMU intended it be imposed upon it and live under other provisions of the booklet, it became its contract as a matter of fact.

THE COURT: Subject to whatever rights Commerce would have under the Taft-Hartley Act or the antitrust laws, right?

MR. COHEN: Exactly.

THE COURT: All right.

Then I think that clarifies the nature of the issues Mr. Cohen is pursuing. Those documents I think --

MR. SOVEL: I will get the accurate information on it but it seems to me paragraph 5 of the answer admits the defendants entered into a collective bargaining agreement and

respectfully refers the Court to the proof of the terms of the conditions thereof.

THE COURT: That seems to me to be consistent with the answer Mr. Cohen has just given me. I don't think that answer would waive the other questions that Mr. Cohen wants to bring up.

MR. COHEN: I want to say specifically on the record here that had I been aware of the specific facts on February 8, 1971, when we were before Arbitrator Kheel, and had I not been led into believing that there was an executed blue book in existence, I certainly would have raised the equitable arguments that arise out of the imposition of a contract without the opportunity of acceptance and rejection of the particular instrument.

THE COURT: I don't think we need to get into that.

MR. SOVEL: I must voice an objection. No one led Mr. Cohen to believe. Mr. Cohen, supposedly a competent lawyer, didn't look at his own documents. I object to him telling me I made misrepresentations to the Court. The man wants to come in and say I am incompetent and at fault, that is an outrageous situation for any lawyer to have to put up with.

THE COURT: Let me try to put it in a little softer manner.

I think as of the time of the arbitration no lawyer would have gone into the matter with the immense depth with which the matter has been gone into by this time, so, in other words, a lawyer might thing as this litigation went on a lot more than he would think of immediately before Arbitrator Kheel. That's about all you are saying and I think that's a natural thing.

Let's go on.

MR. COHEN: There is a tendency of the lawyers in this case to try to become witnesses also.

THE COURT: Let's proceed.

MR. COHEN: I will try to avoid that tendency, your Honor.

Please mark this.

(Commerce Exhibits 23 and 24, marked for identification.)

xxx

BY MR. COHEN:

Q Mr. Barisic, I show you a letter that has been marked Commerce Exhibit 23 for identification. That is your signature that appears on that?

A Yes.

Q Is that a letter by you to American Export Isbrandtsen Lines?

A Yes, sir.

* * *

to that.

Let's go on.

MR. COHEN: Do you object to these?

MR. SOVEL: Let me see what they are.

(Pause.)

MR. SOVEL: Not at all. They are in the stipulation.

THE COURT: 25 and 26 will be received.

(Commerce Exhibits 25 and 26 received in evidence.)

xxx

THE COURT: 25 is a letter from Mel Barisic January 11, 1971 to Milton Pilalas, and 26 is a letter from Pilalas January 13, 1971 to Mel Barisic.

I have to adjourn now. We will adjourn to 2 o'clock. We have a young man from Columbia Law School who is going to do some research on this case for us and Mr. March may need some extra copies of briefs. If you can stay a few minutes and see if you can help them out with the materials --

MR. SOVEL: If your HOnor please, the other gentleman that has joined us at the table is Mr. Eugene Spector, the research director of the union who is also a member of the Bar.

(Luncheon recess taken.)

AFTERNOON SESSION

2 P.M.

M E L B A R I S I C, resumed

THE COURT: You will recall that I requested Mr. Markowitz, who represents the MEBA to advise my law clerk, Mrs. March, by telephone when in the next 48 hours Mr. Calhoun could accept service of the subpoena of Commerce Tankers. Now, Mrs. March had a phone call from Mr. Markowitz, and maybe she could report on that. Just put it on the record.

MRS. MARCH: Mr. Markowitz informed me that Mr. Calhoun was leaving this afternoon for Washington, D.C. Mr. Markowitz did not ascertain what time he was leaving. Mr. Calhoun is expected to return from Washington Friday afternoon, but Mr. Markowitz is not willing to guarantee that he will return, and it is presumed he would return by Monday if he does not return on Friday. I instructed Mr. Markowitz to call the court today from Philadelphia. Mr. Markowitz is going to Philadelphia.

THE COURT: In other words, he really has not responded to my request. Presumably, Mr. Calhoun was not leaving for Washington until some time this afternoon and he could have been served today. We have now put in a call for Mr. Markowitz to find out definitely about the

possibility of serving Mr. Calhoun this afternoon. It seems to me it is a complete waste of time for people to have to hunt and seek responsible union officials who have an obligation to this court to testify in response to subpoenas. And so we will try to take care of it as efficiently as possible.

MR. BERGEN: Thank you, your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. COHEN:

Q Mr. Barisic, directing your attention to Exhibit 25 in evidence, did you personally draft that letter?

A No, sir.

Q Who did?

A The lawyers.

Q Do you know which lawyer particularly?

A The lawyers. We got four of them.

MR. SOVEL: This has been stipulated to in the initial appearance. I don't see why we are beating around the bush.

MR. COHEN: I am not beating around the bush.

THE WITNESS: Phillips. Okay.

Q Mr. Barisic, do you see the name of Mr. F. Goodwyn on Exhibit 25?

A Yes.

Q Do you know who Mr. Goodwyn is?

A I suppose he works for Commerce.

Q Did you know as of January 11, 1971, who he was?

A No.

Q Had you ever spoken to him?

A I'm not sure.

Q Had Mr. Spector to your knowledge ever spoken with him?

A That I don't know.

Q Do you have any information about any telephone conversation that Mr. Spector may have had with Mr. Goodwyn?

A I don't know.

THE COURT: I am afraid I have lost this. Can I have the stipulation?

Now, can the reporter read back the last two or three questions. I just don't follow all the names.

(Record read.)

THE COURT: Why did you send a copy of the letter to Goodwyn?

THE WITNESS: That was the advice of Mr. Phillips

Q To your knowledge has Mr. Phillips spoken to Mr. Goodwyn prior to January 11th?

A I don't know.

Q Do you recall testifying yesterday, Mr. Barisic,

when I asked you the question, "Who did you speak to there?" And the "there" refers to Commerce. Your answer was that it was Mr. Pilalas.

b2 A Yes.

Q Are you certain it was Mr. Pilalas?

A Yes.

MR. SOVEL: Objection. We are going back and forth over the same things that have been covered.

THE COURT: Overruled.

Q What is the source of your certainty that it was Mr. Pilalas?

A Because the suggestion was given to me after I checked who is in Commerce Tanker, it was said Pilalas, so that is the man I called for.

Q Who gave you that suggestion?

A I don't know. I'm not sure if it was the inspector or Mr. Phillips.

Q Do you remember testifying at a deposition taken on April 4, 1974?

A I testified, yes.

Q Do you remember when I asked you the question at page 32, line 3, "Does that"-- and the "that" refers to the fact a copy was sent to Mr. Goodwyn -- "refresh your recollection as to whether or not your conversation might

have been with Mr. Goodwyn?"

that you answered:

"I don't recollect. I know that I spoke to some people over at the Commerce Tankers claiming he can't violate the contract. Whether it was Goodwin or Pilalas or whoever it was, I don't recollect, but then we sent the letters, we went through records and discussion with Spector and the legal department and a letter was drafted and sent over to Pilalas." Do you remember giving that answer?

A Yes, that is the reason I sent it to Pilalas, because that is the guy I spoke to after discussion and recollection comes back to me.

Q Is there anything unusual or unique about Mr. Pilalas' voice?

A I don't know.

Q You have no recollection of anything?

A '71? I don't know.

Q Excuse me?

A That was in 1971.

Q Well, you are certain today that it was Mr. Pilalas and not Mr. Goodwyn?

MR. SOVEL: Objection.

THE COURT: Objection overruled. Go ahead.

A I don't know. I told you that I spoke to someone in the company -- I told you that-- on that thing.

Q Mr. Barisic -- are you finished?

A No, sir.

Q Excuse me.

A After that I discussed what happened, whose the guy to call, when I received the memo. I called for Pilalas, whatever the name was. That's the reason I sent the letter to him, because he was confused or I was confused or one of us when I mentioned to him Article I, Section 2.

First he said yes, he knows about it and the second time he said he's checking. That's the reason I sent it, so there would be a record in writing.

Q When you sent the letter to Commerce did you know that Commerce had entered into a contract of sale already for the vessel Barbara with Vantage Steamship?

A I was not interested in anything except Commerce. I gave you an answer.

Q I don't believe so.

A Tell him to read it.

THE COURT: I don't think it was.

When you sent the letter of January 11th, did you at that time know that Commerce had agreed to sell the Barbara to Vantage?

THE WITNESS: No, I don't recollect it. I based myself on the memo I received from our research

department.

Q On January 11th, when you sent the letter to Mr. Pilalas, did you know that Vantage was an SIU company?

A Yes. On the basis of the memo I received from our research department.

THE COURT: May I see that memo?

MR. COHEN: Yes, your Honor. It is number 11 for identification.

(Pause.)

THE COURT: The questions are confusing to me and they may be to the witness. He says that he knew what was in this memo, right?

THE WITNESS: Right.

THE COURT: This memo is not in evidence.

MR. COHEN: I will offer it right now.

MR. SOVEL: If it is the memo I think it is, I have no objection.

(Pause.)

MR. SOVEL: No objection, your Honor.

xxx (Commerce Exhibit 11, received in evidence.)

THE COURT: You asked if he knew whether the Barbara had been sold to Vantage. Isn't it basically said in Exhibit 11? That's why it confuses me.

MR. COHEN: It is a confusing topic. What

happened here, and this relates to our action for malicious prosecution is that representations were made to the Court on the original application for preliminary injunction that Commerce had moved in secretive ways and sought to transfer the vessel outside of the knowledge of the NMU.

I am trying to get out of this witness that they obtained even before January 11th, 1971, from Mr. Goodwyn, all the information that they wanted to know about the transfer; that there was a contract of sale with Vantage; that it omitted the Article I, Section 2 undertaking.

THE COURT: Let me see that.

I don't know how much you have to belabor that.

The memo says, January 7, 1971, from Mr. Spector to Mr. Barisic, Commerce Tankers sold two vessels to the Vernitron Corporation of Great Neck, New York.

Maybe that is inaccurate but that's not the important part of the memo.

The next paragraph is really the important thing and it says:

"As of January 5, 1971, it was reported that the Barbara was sold to Vantage Steamship Corporation. This is a New York corporation located at 11 Broadway, New York, and operates the Rachel, 5, a general cargo vessel. This company is an SIU company. Steps should be taken to protect

NMU jobs and NMU contract. The Thalia was sold to Texas City Refining Company which is an NMU company."

That is the end of the memo. Maybe I am missing some subtlety.

(Pause.)

THE COURT: We have had a refusal to respond to our request. Mr. Calhoun gives us no time when he can be served. All I can say is that Commerce will have to take whatever steps they can take to have him served.

Who serves subpoenas?

MR. BERGEN: We attempted to have one of our own process servers serve that. I think your Honor has the authority to issue a bench warrant for him.

THE COURT: I don't think that.

It is a waste of time and effort in my view to have people ducking subpoenas when you know they will eventually be subpoenaed.

Do you know where Mr. Calhoun lives?

MR. COHEN: We do not. There were previously interrogatories in this action that were signed by Mr. Calhoun. The interrogatories were prepared as a result of a compromise on a similar type dispute. There was a subpoena served in the same manner as presently served seeking the testimony of Mr. Calhoun, and at that time Mr. Calhoun's

big points and miniscule points, but if a point is established by a document from a common sense standpoint, let's not belabor it.

Go ahead.

BY MR. COHEN:

Q By your letter of January 11th to Mr. Pilalas, what were you seeking to find out for the NMU?

MR. SOVEL: Objection. your Honor. The letter speaks for itself.

THE COURT: Sustained.

Q What was your purpose in sending Mr. Pilalas the letter?

MR. SOVEL: Objection.

THE COURT: I will let him answer.

A On the basis of the memo I received from our research department-- again, we were talking about Article I, Section 2 -- I sent a letter. That's all. It is violating the agreement. It violated on the basis he did not notify me on sale of the vessels regardless. They did not.

Q Were you notified with respect to the sale of the Thalia?

A Not to my recollection. I was not notified directly.

Q Did you send Mr. Pilalas a letter with respect

to the vessel Thalia?

A No.

(Continued on next page.)

T3 Q Do you notice the name Vernitron Corporation on Exhibit 11?

MR. COHEN: Your Honor, may I have that.

A Yes.

Q Did you notice it at the time?

A Yes, the Vernitron Corporation.

MR. COHEN: Mr. Sovel, I don't mind you positioning yourself where you feel comfortable, but will you sit down while I am examining the witness?

MR. SOVEL: I would appreciate your not going up to the witness. I have to see around your bulk.

THE COURT: Mr. Sovel, will you please sit down.

Q Did you make any attempt to contact Vernitron Corporation?

A I told you, and I repeat, that I am not interested. I was interested in Commerce. That is the people I deal with and my people were working for Commerce and I was trying to protect my people, not Vernitron and not anybody else. I repeat that 15 times. I am interested in my people working for Commerce Tanker and why they didn't notify the union.

THE COURT: You didn't communicate with anybody at Vernitron?

THE WITNESS: No, sir.

Q Mr. Barisic, I show you a memo from Mr. Spector

dated April 14, 1969, directed to you. Do you recognize this as a letter or memorandum that you received?

A I don't remember. No. I don't remember this. I don't recollect it right now. They sent it --

MR. COHEN: Any question as to its authenticity, Mr. Sovel?

MR. SOVEL: I agree that this is a photostat of the memo that was produced at the examination.

THE COURT: Has it bee marked for identification?

MR. COHEN: It had previously been marked in the depositions.

THE COURT: Do you want to use it here?

MR. COHEN: I would like to have it marked.

xx (Commerce Exhibit 27 marked for identification.)

MR. COHEN: It's a memo from Mr. Spector to Mr. Barisic. Subject: Acquisiton of Commerce Tanker Corporation and Empire Ship Agents and Brokers, Inc. by Vernitron Corp. dated April 14, 1969.

Q Is that correct, Mr. Barisic?

A That is correct.

Q Do you know how the NMU learned of the acquisition of Commerce by Vernitron?

A No.

Q Do you see a clipping from the Wall Street Journal

mmh3 Barisic-direct

which is part of that memorandum?

A I see it now, yes, sir.

Q Was it common practice for the NMU to watch publications that are available to the public with respect to the transfer of vessels and the transfer of ownership?

MR. SOVEL: Objection. I don't see the relevancy to that here.

THE COURT: Overruled.

A Yes, part of our research department's work.

Q Isn't that how you learned of the anticipated sale of the vessel Barbara from Commerce to Vantage?

MR. SOVEL: I object. It has been asked and answered many times.

THE COURT: I will overrule that.

A Again, I got it from my research department.

Q Did you learn it from any secret informer?

A I got no secret informer. Do you have some?

Q Do you remember discussing with Mr. Sovel a request by Judge Frankel as to how the NMU had learned of the proposed transaction?

A What?

Q Did you ever discuss with Mr. Sovel, your attorney, a request which had been made by Judge Frankel to ascertain how the NMU had learned of the proposed transfer of the

vessel?

A No.

Q You have no recollection of that?

A No.

MR. SOVEL: Your Honor, a document has just been handed to me that is a copy of a letter from me to Judge Frankel dated February 26, 1971. I have no objection to its admissibility in evidence.

THE COURT: Let's get it marked for identification.

xx (Commerce Exhibit 28 received in evidence.)

MR. COHEN: There being no objection to its admission in evidence, I ask that it be so admitted.

THE COURT: Received.

xx (Commerce Exhibit 28 received in evidence.)

BY MR. COHEN:

Q Did you ever advise Mr. Sovel in words or substance that at or about the same time that you received Mr. Spector's memorandum, Exhibit 11 in evidence, you also received a telephone call from an official of another tanker company in contract with the NMU who knew of the sale of the vessel Barbara?

A I don't recollect that.

Q You have no recollection of that fact?

At any time prior to January 5, 1971, and the

inclusion of article 1, section 2 in the NMU contract has there been any attempt by any NMU contracted company to sell one of its vessels to an SIU contracted company?

MR.SOVEL: May I have the question?

(Question read.)

A In the case of Robin Lines, that was the other way around, it was in '58.

b2

Q When did article 1, section 2 first become part of the NMU agreement?

MR. SOVEL: Objection, your Honor. It has been in the record so many times.

THE COURT: Overruled.

A Again I will have to explain --

Q Approximately.

A In 1958 -- please let me explain; I can't say yes or no -- in '65 there was a strike of the licensed personnel and the "Me, too" clause or whatever you call it, transfer of vessel. Article 1, section 2 was part of the battle between the officer unions in '65. In 1969 we finally got it, the unlicensed personnel, on the basis of the fact we felt we were being discriminated against. We had discussion of this article back in '67 and '68 between ourselves, between Gene Spector and myself and Nat Phillips, or whoever was there. But finally we got it in the negotiation of 1969.

Q Maybe my prior question was not clear. My question is: At any time after you got the clause in 1969 or thereabouts, did you know of any instance prior to the attempt to transfer the vessel Barbara where any NMU contracted company was attempting to sell one of its vessels to an SIU contracted company?

A Isbrandtsen Line Tanker, I think. Then I think there were a couple of Export Line ships. One ship was scrapped, I think, in the end.

Q Was that before or after January 5th?

A Somewhere around that. I am not sure of the dates.

Q Did anyone from Commerce Tankers ever attempt to mislead you about the facts relating to the proposed sale of the vessel Barbara to Vantage?

A The only conversation I had at Commerce was the telephone call I had with Mr. Pilalas.

Q Did you meet me, Mr. Barisic?

A I answered your question. The conversation was with Mr. Pilalas, and then a meeting we had over at the union hall. I don't know what day it was. That was January, or wherever it was.

Q Did anyone from Commerce ever lie to you?

A I never talked to anybody except Pilalas.

Q Did anybody from Vernitron ever lie to you?

A I don't know who is from Vernitron.

Q Did I ever lie to you?

A Did I ever lie to you?

Q I am not answering questions.

THE COURT: We're not getting anywhere.

MR. COHEN: Your Honor, I am ready to end my examination of the witness. I think there were representations made and conclusions contained within Judge Frankel's opinion.

THE COURT: You can argue that. Now just ask the questions and then we can argue later. Are you through with this witness?

MR. COHEN: I have some exhibits that I would like to get into evidence.

Mr. Sovel, do you have any objection to the admission of 27 for identification?

MR. SOVEL: No.

MR. COHEN: And 13 and 14 for identification?

MR. SOVEL: No.

THE COURT: They will be received.

(Commerce Exhibits 13, 14 and 27 received in evidence.)

xx

MR. COHEN: I would like to note for the record, Mr. Sovel, that the only clean copy of the NMU blue book

which Commerce presently has is the one entitled Second Printing, January, 1971. I think we have established that the blue book's first printing was in 1970. So we won't bother to have a separate exhibit.

MR. SOVEL: It's okay with me. If I see any difference I will come up with another copy.

BY MR. COHEN:

Q You said you had some meetings after January with people from Commerce? Is that right?

A Yes.

Q Do you remember when those meetings were?

A January some time. They came to our union hall.

Q Was there more than one such meeting?

A To my recollection there were two meetings that I can remember.

Q Did you have them in the same place?

A Yes, headquarters on Seventh Avenue.

Q In the same room at headquarters?

A No, I don't think so. I think one was in the conference room and one was in Mr. Wall's office.

Q Do you know which came first?

A You got me. I don't know.

Q What do you remember about the meeting in Wall's office?

A Not too much, because I was in and out. I was going from my office to Mr. Wall's office, back and forth. I just don't recollect anything.

Q Did I understand your testimony to be that you just don't recollect anything?

A No, because I was not directly involved in the thing.

Q How about the prior meeting? Were you directly involved?

A The other meeting I was there and there were three or four people from the company side. There were three or four from the union side, from the legal department there. In my opinion there, as I said before, I was just interested in article 1, section 2 to protect the job for our seamen. I remember that distinctly. Give us the ships, give us the jobs, and that my position all the way.

Q Was there any discussion of the steps the NMU might take?

A There was some discussion with Gene Spector and those people. My position was once I learned this, gentlemen, that is all. That is the reason we got a legal department. Whatever other discussion was coming up, I was not interested in that. There was no way out, except to give us the jobs, protect the jobs.

Q Nothing would satisfy the NMU other than Commerce retaining the vessel?

A That is right.

MR. COHEN: That is all.

MR. KLEIN: There will be some cross. I request a short recess.

MR. BERGEN: Before we recess, Mr. Camhi has obtained a civil subpoena from the clerk's office. He met one of our law clerks who is in the back of the courtrom and we propose to give him the subpoena and have him serve it on the Marine Engineers Beneficial Association right now.

(Recess)

CROSS EXAMINATION

BY MR. KLEIN:

Q Mr. Barisic, as you know, I am Fred Klein, representing the plaintiff Vantage.

Drawing your attention to the 1969 negotiations, were those sent out to the NMU contracting companies concerning each meeting prior thereto?

A They were notified at the meeting, those people who were present.

Q When you say they were notified at the meeting, you mean the original meeting?

A About the next meeting or the meeting after.

Q At your deposition that was taken on April 4, 1974, the following questions and answers occurred:

"Q They were invited to the original meeting, all of them. The date was set one after another and written invitations were extended?

"A No, sir.

"Q After the first meeting to which you stated there was a written invitation --

"A If they were interested to be there they would know exactly when the next meeting was scheduled.

"Q So in order to attend the meeting you had to be at the prior meeting?

"A Of course."

Is that testimony still true today?

A Yes. They have a phone. They could call by phone if they're interested.

Q You testified there were combined union meetings prior to that round of negotiations. As a result of those meetings and during those meetings it was the intention of the unions at the meetings to keep the industry in a firm basis. Do you recall that testimony?

A Yes.

Q I believe you also testified that there are two-halves to the industry, the halves represented by MSC and TSC on the one hand and the half represented by the AMA on the other hand.

A Yes.

Q Were representatives of the SIU invited to those union meetings?

A No, sir.

Q Were representatives of any other unions other than the SIU, MEBA, MM&P, and ARA invited to those meetings?

A Yes. At the opening of the meeting, there was the MEBA there.

Q Were any other labor organizations invited to those Miami meetings between the unions?

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A I testified before there was three or four other unions there.

Q Other than the NMU, MEBA, MM&P and ARA were any other labor organizations invited to those meetings?

A Not to my recollection.

THE COURT: At the Miami meetings you had the NMU?

THE WITNESS: Yes.

THE COURT: The MEBA?

THE WITNESS: Yes, sir.

THE COURT: The MM&P?

THE WITNESS: Yes, sir.

THE COURT: The ARA?

THE WITNESS: Yes, sir.

THE COURT: Anybody else?

THE WITNESS: Not that I remember.

THE COURT: According to the record you've got for the licensed personnel, the MEBA and the MMP.

THE WITNESS: Yes.

THE COURT: Then you testified there was the BMO, which represented the same class of persons as represented by the MEBA and the MMP, right?

THE WITNESS: Yes. They represent the same type of people.

THE COURT: You have testified that the NMU and

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the SIU have a kind of competition or rivalry?

THE WITNESS: Yes, sir.

THE COURT: I don't know how to put this:

Is the NMU more or less allied in any way with the MEBA as distinguished from the BMO?

THE WITNESS: At one time the BMO was an NMU chartered union but they are now part ILA.

THE COURT: On ships that are NMU ships do you find one set of the other unions consistently or do you sometimes find that the officers are represented by the MEBA on your ships, and sometimes represented by the BMO? How does that work?

THE WITNESS: There are only two companies -- used to be three -- United Fruit which is out of business of foreign ships. BMO, they cover deck officers. Now there is the --

THE COURT: Mainly, your companion unions on ships are the MEBA and the MMP?

THE WITNESS: Yes, sir.

THE COURT: How about the radio situation?

THE WITNESS: You have two radio operators unions.

THE COURT: Which one is your companion union?

THE WITNESS: It's hard to say.

THE COURT: It varies?

THE WITNESS: Yes, sir.

BY MR. KLEIN:

Q It is my understanding, and we are talking about the Miami meetings between the unions, that with respect to the MEBA, only MEBA District 1 attended these meetings.

A I have no recollection. I know the MEBA was there.

Q To your knowledge, where NMU is on a vessel which district of MEBA is traditionally on that same vessel?

A District 1.

Q Isn't it also true that where SIU has a contract with the vessel, MEBA District 2 would have a contract with that same vessel?

A Not necessarily. They have District 1 and District 2.

Q With respect to the unions that attended this Miami meeting, isn't it fair to say that the negotiate, they all negotiate, with the TSC and MSC?

A Yes.

THE COURT: What is that?

MR. KLEIN: Tanker Service.

THE COURT: I'm lost. What are you talking about now?

MR. KLEIN: When the unions negotiate they negotiate on behalf of their contracted employees where the MSC and TSC --

THE COURT: We have not had that before.

Marine Service Committee and the Tanker Service Committee?

THE WITNESS: Yes.

Q You testified yesterday that at this Miami meeting a decision was made to make all companies part of the same contract. Do you recall that testimony.

A I didn't say that. To get stability at the waterfront so the unions would get together.

Q There was a decision made to have all the companies part of the same contract?

A It would lead to that, I guess, yes.

Q At any time during negotiations with the representatives of the TSC notified of this intention?

MR. SOVEL: Objection. I think we are switching from the Miami meeting to negotiations. I think the question is somewhat obscure.

THE COURT: Clarify it.

Q At any time during the negotiations with the TSC were representatives of the TSC notified of the union's intention to make all companies part of the same contract?

A That I don't recollect.

MR. KLEIN: I believe Mr. Sovel undertook to provide us this afternoon copies of certain letters sent to the independent companies pursuant to Mr. Cohen's request.

MR. SOVEL: I don't know that I undertook to do it this afternoon. We have not been back to the office, since we had lunch in the same restaurant.

MR. KLEIN: Your Honor --

MR. SOVEL: I thought the question of relevancy was determined. I will get what ever we have got.

THE COURT: You said you would produce all of that material and I thought this morning you said you would produce it this afternoon. It is not here. We will have to work around that.

They don't have it here.

When can you have it here?

MR. SOVEL: Very definitely tomorrow morning.

THE COURT: All right, tomorrow morning.

Let's go on to something else.

Q How many independent companies does the National Maritime Union have a collective bargaining relationshi

with now?

A I don't know how many. I am out of the country the last few years.

Q I am speaking of the 1969 round of negotiations,

A Ten, twelve. Freighters and tankers, maybe more. I don't have an exact recollection how many independents

Q Of that number how many of these independent companies actually signed the blue book?

A I don't know.

Q Do you have any independent knowledge that any of them ever signed the blue book?

A Yes.

Q Do you have any estimation how many?

THE COURT: We are going to get the records here. Why can't we wait for that. Nobody would remember that.

Q To your knowledge, was there an understanding reached with Mr. Silver or any other representative of the Tankers Service Committee that whatever was negotiated between Mr. Silver and the NMU would be applied to the independent companies as well?

A First of all, it was not only Mr. Silver that we were negotiating with. It was Mr. Silver as a lawyer and he had about twenty or thirty company people there,

port captains, captains, stewards, labor relations, lawyers, anything you want. So the negotiations doesn't go between me and Mr. Silver. The negotiations is the group of ship owners whose interest was to be there to protect the contracts or their companies or whatever it is. At no time the independent company was refused to come into the meetings and I tell you the reason they didn't come.

They figure, let the big company carry the burden. They can save them money. We are going to agree anyhow whatever agreement comes out of the big meetings, so why be there and spend all this time and money.

Q Is that traditionally called a "free ride"?

MR. SOVEL: Objection, your Honor.

THE COURT: I don't think it makes any difference. Is it called a "free ride"?

THE WITNESS: For the independent company, yes.

Q Has there ever been any discussion with Mr. Silver or any other representative of Tankers Service Committee concerning the fact that some of these independent companies were getting a free ride in negotiations?

A No. Especially me and Mr. Sovel and Mr. Oppenheimer and General Conners said let's get more independent companies in.

They have telephones and managers and they can

find out when the next meeting was scheduled. I tried to induce them to come in.

Q What steps did you take to induce the independent companies to come into negotiations?

A To come in? To come in and listen to what is going on.

Q What steps did you take?

A I told them to call. Call the people up. There was a lot of independent companies and I said be sure to follow through. Some come in once in a while and some don't. They have no time. They are too small a company. They only got one or two ships and to hire a special guy to spend every day at the negotiations --

Q Did these efforts continue after the initial meeting?

A Some of the independent companies showed up.

Q Did these efforts on your behalf and on behalf of the NMU to keep the independent companies coming to the negotiations continue during the course of negotiations?

A They was not there. If I see them any other place I would tell hem to come in.

Q On page 11 of your deposition, you testified that upon receipt of Mr Spector's memo in early January you asked him to check as to whether or not Vantage was an SIU company.

Do you recall doing that?

A The memo I received --

Q Do you recall giving that testimony?

MR. SOVEL: Objection. I think the testimony ought to be read.

THE COURT: All right.

Q The testimony is on page 11:

"Q What transpired in your conversation with Mr. Spector?

"A I just asked if that is an SIU company and he said 'Yes, I checked,' and I said 'Fine'."

A Yes.

Q On page 36 the question was asked of you:

"Q Did anyone from the NMU take any steps whatsoever that you know of as of January 11th to obtain from Vantage an undertaking to continue the NMU crew upon its purchase of the vessel?

"A Again I have to go back. I am not interested on Vantage. The procedure -- let me explain that. The procedure when an NMU contract had companies about to sell ships to another company who don't belong to the same union, they are the one to go ahead after. They have been told that the contract will have to follow the ships. They are the ones who are going to talk to Vantage or to somebody

else by whom the ships are going to be purchased to make sure the sale goes through that same union is going to follow through. This is our past practice in the industry."

Do you recall that testimony?

A Yes.

Q That's true today?

A Yes, sir.

Q There has been sme testimony concerning the American Export Isbrandtsen situation and on page 43 the question was asked of you:

"Q At the time you sent Defendant's Exhibit 30 for identification (which is different here), did you ascertain whether there was a signed blue book by American Export Isbrandtsen Lines?

A No. Not in the blue book."

Was that true?

MR. SOVEL: If your Honor please, I would rather have the next question and answer read.

THE COURT: Read the next question and answer.

"Q It would not have been in the blue book" -- I think I am entitle the answer --

MR. SOVEL: The freighters do not have a blue book. It is a different color book. You are asking the wrong question.

MR. KLEIN: I will withdraw that question.

THE COURT: Anything else?

MR. KLEIN: Yes, sir.

THE COURT: Please proceed.

Q Following the Miami meetings between the unions, were there other meetings between representatives of the NMU and the MEBA?

A Yes, sir.

Q When and where did they occur?

A Here in New York.

Q Who, on behalf of the MEBA attended those meetings, if you can recall?

A To the best of my recollection Jesse and Mr. Pressman.

Q When you refer to Jesse, you are referring to Mr. Calhoun?

A Yes.

Q Was Mr. Pressman the attorney for the union?

A Yes.

Q Mainly the MEBA union?

A Yes.

Q Is he now deceased?

A Yes, sir.

Q Were there a number of such meetings?

A A few, yes, sir.

Q Did you attend those meetings?

A One or two, maybe.

Q Do you know if there have been any conversations with Mr. Silver or any other representative of the Tankers Service Committee concerning this litigation?

A This particular litigation?

Q Yes, sir.

A I think so.

Q Do you recall the first time such conversations occurred?

A No.

Q Do you recall the nature of those conversations?

A No.

Q Were these conversations with Mr. Silver?

A I suppose. I didn't have a conversation with him.

Q On page 125 of the transcript:

"Q At the Miami pension trustees meeting what do you recall that Mr. Curran said about the per-day, per-man contributions?

"A Well, over there already we had the feeling of losing ships and losing jobs. So the only thing that we

could do for discussion regarding pension, was to have some kind of guarantee regardless of per-man, per -day, or whatever it is."

Do you recall that testimony? That is true?

A Partly, yes. Some of it, yes.

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T5 Q Well, do you recall all of it or not?

A Some of them.

Q Some of the discussions?

A Yes, because like I said before I testified before, I just attended one meeting. This was off talking between ourselves, not at the meeting.

Q Well, was any of this discussion in the presence of Mr. Silver?

A No, not while I was there, anyway.

Q The next question:

"Do you recall what anybody other than Mr. Curran might have said about the per day per man contributions?

"A Well, I am sure that Mr. Silver mentioned something. This is trustees' meeting; this is not any negotiation; this is a regular trustees' meeting."

Do you remember saying that?

A I don't know.

THE COURT: At what meeting?

MR. KLEIN: This is a trustee meeting in Miami, your Honor.

THE COURT: If you are intending to make any impact on me you're not doing it. I don't know what you are referring to. I don't know who was at the trustees' meeting. You're just picking pieces out of a deposition and reading them,

which I suppose in the abstract you have a right to do, but you have the witness on the stand. You could ask him. You see, you know your case. I don't. And I just don't know what you're talking about.

MR. KLEIN: There was testimony yesterday that there were meetings in Miami prior to 1969, negotiations between the unions we were talking about before.

THE COURT: I am aware of that, but what is the trustees' meeting?

MR. KLEIN: There was also testimony, your Honor, that there was a trustees' meeting in Miami at or about that same time in which Mr. Silver, the representative of TSC, who was counsel to the fund, attended, along with representatives of NMU.

THE WITNESS: That is the trustees' meeting, not the union meeting.

MR. KLEIN: That is correct.

THE WITNESS: So you have confusion here.

THE COURT: I will take your word for it. I just didn't understand that. I am sure it is there. Who was at the trustees' meeting? Is this a meeting of a bunch of bankers or trustees or who? It doesn't mean a lot to me.to just say "trustees' meeting."

Q Mr. Barisic, do you recall in 1969 or prior a

meeting between the trustees of the NMU pension fund which was held in Miami?

A There was a trustees' meeting, yes. I don't recollect the date. There was a trustees' meeting, yes, sir.

Q And was Mr. Silver at that time counsel to that pension fund management council?

A Yes, and he is at present.

Q And who on behalf of the union if you can recall attended that meeting?

A Joe Curran, Mr. Wall, myself, Miller, or Jimmy Martin. I don't recollect. I am not sure if he was there, though.

THE COURT: Who is he?

MR. SILVER: Well, he is an officer of the National Maritime Union.

THE WITNESS: That was the union side. On the company side I don't recollect. I think it was Captain Marcus.

THE COURT: Who?

THE WITNESS: Captain Marcus.

THE COURT: Who does he represent?

THE WITNESS: I think he is Gulf Oil. And somebody from U.S. Lines. I'm just guessing, your Honor. I don't recollect. I know it was some company. Plus Mr. Silver, and

Mr. Oppenheimer.

Q Is Mr. Oppenheimer also an attorney representing both the TSC and the management trustees of the pension fund?

A Yes, sir.

Q What, if anything, do you recall Mr. Curran saying at that trustee meeting about annual guarantee of contributions by employers?

A I know it was getting rough, where we are going to lose a lot of ships, a lot of jobs, and the discussion was there on the guarantee contribution, as I recollect, something about it, because we used at that time to have per day per man contributions, and to protect our members, to protect our pension we were talking about some kind of a contribution that would solve the problem in casewe lose so many ships, so many jobs, a kind of guarantee.

Q With reference to the contributions, were you talking about contributions by the TSC members?

A We didn't discuss about TSC or TSC or anything; we were discussing what happened to the membership.

Q Well, on page 127 of your deposition when the same question was asked of you you said, "We didn't discuss about TSC members; we discussed about all companies in the contract, whatever it would take to keep the plants going, that is what we want."

Is that true?

A That is right.

Q During the discussions with the representatives of MEBA, and, more specifically, Mr. Pressman, do you recall Mr. Pressman saying that the union should try to avoid striking because of the disastrous effect it would have upon the employers and unions?

A Well, that was the general understanding between

b5 all the unions.

Q Do you recall anything specifically being said about the competitive effect upon employers if there was a strike in 1969?

A No.

Q Well, when I asked you that exact question or when that exact question was asked of you by Mr. Cohen on page 137 of your deposition --

MR. SOVEL: Will you state the question first?

Q "Q Do you recall anything specific being stated upon the competitive effect upon employers if there was a strike in 1969?

"A I don't recollect the exact words, but Mr. Pressman, Mr. Lee Pressman said something to that effect about striking."

A Well, that is what I said before.

Q During the 1969 negotiations between TSC and MSC

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were Mr. Pressman and Mr. Calhoun present?

MR. SOVEL: I have to object to that question as misleading.

THE COURT: What is misleading?

MR. SOVEL: The testimony was not that it was with TSC; it was with those who wished to participate.

MR. KLEIN: It was not intentional to mislead.

A In this particular, the first meeting we had, Lee Pressman and Jesse Calhoun and quite a few companies, independent, were included.

Q Will you explain to us what the meaning of the words manning scales is?

A Manning scales? It is manning aboard ships.

Q For instance, NMU crew members on a ship?

A NMU crew members in three different departments represented by the NMU.

THE COURT: Who was the man who was here this morning?

MR. BERGEN: Mr. Lamy.

THE COURT: Who is he?

MR. BERGEN: He is with the MEBA at 11 Battery Plaza.

THE COURT: What office does he occupy?

MR. BERGEN: I am not sure.

THE COURT: He is under subpoena.

MR. BERGEN: Yes, he is, and we're trying to serve

someone again at this instance.

THE COURT: Try to call Mr. Markowitz at the union, Mrs. March.

MRS. MARCH: The only number I got is the Battery Park address.

THE COURT: Tell him he is under subpoena and he is due over here.

Q Referring to manning scales, are these manning scales contained in the collective bargaining agreement between the NMU and its contracting companies?

A No.

Q Where are they contained?

A We used to have them in a contract before, but now it is just the regular negotiations between the company and the union, how many men on deck, how many men in the engine department, how many men in the steward's department.

Q Have there been instances between 1969 and 1972 where manning scales were reduced at the request of companies?

A Yes, sir.

Q And would this reduction be for reasons of competition?

A For reasons of competition, yes.

MR. BERGEN: May I interrupt, because this is relevant to your law clerk's call. Our law clerk just went

over to the offices of MEBA, announced his purpose to the receptionist, and a gentleman named Lorado stuck his head out of a office door and said, "We are not accepting service," and said to him, "You can leave it on the desk if you want to, but we are not accepting service," and closed the door. And so he left it with the receptionist. He did not get the receptionist's name. She would not give it to him. But she did give him the name of Mr. Fred Lorado.

THE COURT: Who is Fred Lorado?

MR. BERGEN: I gather some employee there. We couldn't find that out, either.

Q Was it the NMU's policy during negotiations in 1969 to be concerned with the competitive aspect of employers with which it had contracts during the 1969 negotiations?

MR. SOVEL: Objection, your Honor. I fail to see the relevancy of this.

THE COURT: Objection overruled.

THE WITNESS: The only thing I was interested in the negotiation in 1969 was to conclude my contract the best way I could, never mind worrying about the companies at thatparticular time.

Q On page 190 of the deposition I asked you the same exact question and the response was yes.

A Yes, until I finish my contract first.

Q Were reports concerning the progress of the negotiations in 1969 made to Mr. Pressman and to Mr. Calhoun?

A That I don't know. I don't recollect that.

Q To your knowledge during the 1969 negotiations was there any intention on the part of the NMU to connect article 1, section 2 with the union's pension plan proposal?

A No, sir.

Q Was there any discussion between the members of the NMU concerning the effect that proposal, the one concerning article 1, section 2 would have with reference to the other proposal concerning the guaranteed pension plan contributions?

A Not to my recollection.

MR. KLEIN: I have nothing further.

THE COURT: Any cross, Mr. Sovel?

CROSS EXAMINATION

BY MR. SOVEL:

Q Mr. Barisic, to clarify things, the MEBA and the MMP negotiate and have collect bargaining agreements with the companies that are members of the Maritime Service Committee and the Tanker Service Committee?

A Yes.

Q They also have contracts with the companies that are independent companies that are under contract to the National Maritime Union, is that correct?

A Yes, sir.

Q However, the MSC and the TSC also applied their contract to the AMA companies?

A Yes, sir.

Q The MEBA and the MMP also have contracts with companies that are represented by the AMA?

A Yes.

Q Now, to your knowledge were the negotiations that were going on in 1969 publicized in the public press?

A Yes.

Q Isn't it correct that the NMU negotiates separately with the companies on matters of manning scales?

A Yes, sir.

Q On particular ratings on particular ships?

A Yes, sir.

b4 Q And that applies to both companies that are represente by MSC and TSC and the independents?

A Yes, sir.

MR. SOVEL: May I see Exhibit 26?

Q Mr. Barisic, I show you Exhibit 26 in evidence, which is the letter dated January 13, 1971, from Milton

Pilalas to you and I refer your attention to the last sentence of that letter which states:

"I know that the same unions are continuing on the Thalia and have no reason to believe that it will be otherwise with the Barbara."

Do you see that sentence?

A Yes, sir.

Q Did this sentence mislead you into believing that the NMU would be continued aboard the Barbara?

A Yes.

THE COURT: May I see that?

MR. SOVEL: I have no further questions, your Honor.

Your Honor, with the indulgence of counsel, apparently in my effort to clarify the alphabetical soup I may have inadvertently stated the letters, and I think I can propose a stipulation that will make it clear, and that is the Masters, Mates and Pilots Union and the Marine Engineers Beneficial Association Union has contracts with the Maritime Service Committee companies and the Tanker Service Committee companies and some of those companies that have contracts that are independent contracts with the NMU and with the companies that are represented by the American Maritime Association, that they cut across both groups of employers.

Is that agreeable?

MR. KLEIN: I am not clear.

THE COURT: Apparently it is complicated. Why don't you just work out a stipulation and explain it to me tomorrow and read it into the record so I can at least understand what you're talking about.

Is there any redirect?

MR. COHEN: Briefly, your Honor.

REDIRECT EXAMINATION

BY MR. COHEN:

Q Mr. Barisic, I would like to go back and just see if we can summarize for the court --

MR. SOVEL: Objection.

THE COURT: No, please don't summarize.

Q Isn't it true, Mr. Barisic, that the maritime industry in the beginning of '69 was in a lot of trouble?

MR. SOVEL: Objection, your Honor.

MR. COHEN: Your Honor, it's just a simple predicate for a short series of questions.

THE COURT: Don't worry about the predicate. I can draw some conclusions from things that are in evidence.

Q Isn't it true, Mr. Barisic, that the need for combined union action in 1969 was to avoid disastrous economic and financial effects on the employees and employers

alike?

A I don't know.

Q Isn't it true, Mr. Barisic, that in 1969 it was felt by the NMU and others participating in the maritime negotiations that there had to be uniform industrywide stands and industrywide contracts in order to prevent disastrous financial consequences to both employees and the companies alike?

A No, sir.

Your Honor, this would take me two hours to explain, and this particular question Mr. Spector can give you the answer of why. It was not the question of finances, it was the question before. In 1965 there was --

THE COURT: Just a moment. In the first place, these conclusory questions don't help me. I think we have done as much as we can with this witness. Let's let him go and try to work with other witnesses on specifics.

(Witness excused)

THE COURT: Next witness.

MR. BERGEN: Ned Phillips, your Honor.

NED RICHARDSON PHILLIPS,

called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BERGEN:

Q Where are you employed?

A Office of Abraham E. Freedman.

Q How long have you been so employed by that office?

A Six and a half years.

Q Can you describe what Mr. Freedman's law office is in relation to the NMU?

A Mr. Freedman is general counsel to the National Maritime Union.

Q Can you tell us by whom you were employed prior to Mr. Freedman's office?

A By Lee Pressman.

Q Can you tell us who Mr. Pressman is?

A Mr. Pressman is an attorney.

Q Did he have some relationship to the shipping industry?

A Yes.

Q What was that?

A He was general counsel to the Marine Engineers

Beneficial Association and also co-counsel to the Marine Engineers Beneficial Association Welfare, Pension and other fringe benefit plans and trusts.

Q How long were you employed by Mr. Pressman?

A Approximately ten years.

Q Mr. Pressman is deceased?

A I have been so informed, yes.

Q I don't know. I'm asking you.

A I didn't attend the funeral. I have not seen him.

THE COURT: When did you work for him?

THE WITNESS: From 1958 to 1968.

Q Does Mr. Freedman's office have any other clients other than the NMU?

A Yes.

Q Would it be fair to say that is his primary client which his office spends the major amount of its time on, the NMU?

A I do not know as to that.

Q How long have you been working there?

A Six and a half years.

Q You can't answer my question?

MR. SOVEL: Objection, your Honor.

THE COURT: Sustained.

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MR. BERGEN: I think that's a proper question, your Honor.

THE COURT: Sustained.

Q How much of your time do you spend on NMU matters?

A I don't keep a time sheet.

THE COURT: So what? I regret getting irritated but I am beginning to feel that I am getting a lot of things that are vaguely peripheral.

The NMU is a client of Mr. Freedman's office. I don't really know what difference it makes if they have other clients, no other clients, or what.

Q Are you familiar with the fleet-wide principal?

A I have heard of it.

Q Can you tell us what it is?

MR. SOVEL: Objection, your Honor. It is a question of law and not a question of fact.

THE COURT: I will overrule that objection.

A It's been variously construed by different people. I can't tell you as a matter of fact what it is. I can only tell you what I, as an attorney conceive it to be.

THE COURT: You can't tell us what somebody else thinks. Tell us what you think.

THE WITNESS: In my opinion the fleet-wide

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principal means that the vessels which accrete to a company which has a collective bargaining agreement with a particular union, whether by purchase or construction, becomes a part of the collective bargaining unit and is covered by the same collective bargaining agreement, that's the employees would be covered by the same collective bargaining unit or agreement.

Q In other words, if I own a ship and it is represented --

THE COURT: His answer is perfectly plain. You do not have to have "in other words."

Q During the negotiations between the NMU and the TSC and MSC in 1969, Mr. Phillips, were you involved in those negotiations at all?

A I was involved in NMU negotiations in 1969 which included the TSC and MSC as well as the other companies.

Q Can you describe what your role was in those negotiations?

A I assisted in the negotiations, working out the language after the parties ahd agreed in principal on what they intended to achieve.

Q Did you participate in any of the actual negotiations?

A To the extent that I have just described, yes.

Q Did you participate in any of the negotiations with respect to Article I, Section 2?

A Yes.

Q Can you tell us when that first became a subject of negotiation?

A I can't give you a precise date. It was some time in the fall, somewheres between July and December of 1969. I could not pin it down more precisely. I think it was even after July, probably early in the fall.

Q 1969?

A Yes.

Q Do you recall how that first became a subject of negotiation between the NMU and the employer groups?

A Precisely, no.

Q Imprecisely then.

A Imprecisely I recall seeing a copy of the language that had been made a part of the collective bargaining agreement of the MEBA and I was advised that the companies who participated in negotiations were agreeable to the NMU having a similar clause, and I then proceeded to participate in adapting the language, modifying it, according to the particular needs of the NMU.

Q Who so advised you that the companies were agreeable to that?

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A I don't remember specifically.

Q Was it somebody from the TSC or MSC?

A No.

Q Was it somebody from the NMU?

A I don't know.

Q Was it Mr. Barisic?

A I don't remember.

Q You have no recollection?

A None.

MR. BERGEN: May I have this marked, please?

zxxx (Commerce Exhibit 29, marked for identification.)

Q I show you Commerce Exhibit 29 for identification and I ask you if you can identify that document?

A Yes.

Q Can you tell us what it is?

A This is a complaint which I drafted in seeking enforcement of the aware of Mr. Kheel in the arbitration between Commerce and the NMU regarding the breach of Article I, Section 2, in that the Barbara was contracted for sale by Commerce without complying with Article I, Section 2.

Q It is a copy of the complaint which commenced this proceeding, this action, that we are here today on?

A That's what it looks like.

MR. BERGEN: I move it be accepted in evidence.

MR. SOVEL: Objection, unless we have the complete document. There is an order to show cause that goes with it.

THE WITNESS: This is a part of the record of this case, your Honor.

THE COURT: This is the complaint?

MR. BERGEN: Yes, your Honor. Without the exhibit. The exhibit is already in evidence. I am about to ask Mr. Phillips about that.

THE COURT: I will receive it.

MR. SOVEL: I can offer that myself later.

THE COURT: What is the civil action number?

THE WITNESS: There is no number on it.

MR. BERGEN: This is the civil action.

MR. SOVEL: 71 Civ. 582.

THE COURT: Did Judge Frankel enter his order in 71 Civil 582?

THE WITNESS: The original application was before Judge Wyatt, your Honor.

Q Directing your attention to paragraph 5 of Exhibit 29, paragraph 5 refers to a copy of this agreement annexed hereto made a part hereof marked Exhibit 1. Is that the blue book which has been marked as Commerce Exhibit 13?

A I believe so, yes.

Q That was the only document that was annexed as Exhibit 1, Exhibit 13, is that correct?

A That's correct.

Q Let me quote you paragraph 5. It says:

"Defendant has entered into a collective bargaining agreement covering wages, hours, working conditions, for all unlicensed personnel aboard said vessel."

Is that an accurate statement?

A According to the stipulations of facts that are a part of the record in this case, yes.

Q At the time you drafted this document was this an accurate statement?

A Yes.

Q Didn't you represent to the Court yesterday that there was no signed agreement, no signed blue book, between Commerce and the NMU?

A I did not represent. I said the NMU did not have any such signed book in its files.

Q Isn't it a fact that there isn't any signed blue book and there wasn't any at the time you drafted this complaint in February of 1971 between the NMU and Commerce?

MR. SOVEL: Objection.

THE COURT: We are really going to get nowhere on this tact. This man drafted a pleading and said there was

a contract. We have had a statement this morning from Commerce that as far as contract law excluding problems of labor law and antitrust law, there was a contract binding on Commerce.

What would you expect Mr. Phillips to put in the complaint that he drafted in that action?

MR. BERGEN: I would expect to have him put in the complaint an accurate allegation and a representation to the Court and that's the purpose of my questioning.

THE WITNESS: There is no language of exclusion in that.

THE COURT: It says "Defendant has entered into a collective bargaining agreement covering wages, hours, working conditions for all unlicensed personnel aboard said vessel.

"A copy of this agreement is annexed hereto made a part hereof and marked Exhibit 1. "

You can certainly try some questions, but really--

MR. SOVEL: May I say that they having omitted the allegations, I don't think they can start to impeach or withdraw their admission. It is a false issue to begin with. We have admissions.

THE COURT: What is your next question?

MR. BERGEN: My point, your Honor, is that the

NMU went into Judge Frankel and made a lot of representations about agreements, things that were said, things that were not said, and things that were misleading.

MR. SOVEL: Objection.

THE COURT: Again, we have to use some judgment in what to pursue at this trial. As far as the allegation of paragraph 5, I am going to tell you right here and now that in view of the admission made by counsel this morning I would have a very difficult time finding that was a fraudulent statement or anything close to it.

Let's go on to some other point you want to make about the representation.

MR. BERGEN: Mark this please.

xxx (Commerce Exhibit 30 marked for identification.)

Q Mr. Phillips, I show you Commerce Exhibit 30 for identification and I ask you if you can identify that.

A It is a photocopy of an affidavit bearing my signature.

THE COURT: What is the date?

THE WITNESS: Executed on the 22nd day of February, 1971.

Q That was an affidavit submitted in support of the NMU's application for a preliminary injunction in this proceeding?

A Yes. This is an affidavit in support of the plaintiff's motion for preliminary injunction under Rule 65A.

MR. BERGEN: I ask that it be admitted into evidence.

THE COURT: Any objection?

MR. SOVEL: No objection.

(Commerce Exhibit 30, received in evidence.)

xxx

Q Referring you to paragraph 6 of Exhibit 30, the first sentence reads:

"Vantage is a party to a collective bargaining agreement with another union, the terms of which require it to recognize that union as the representative of all unlicensed employees aboard its vessels."

Can you tell me how you knew that, Mr. Phillips?

A I obtained that information from the research department.

Q The research department in the NMU?

A That is that they were a party to a collective bargaining agreement with another union.

Q The research department in the NMU told you that?

A When you say "that," the research department told me that Vantage was a party to a collective bargaining

agreement with another union.

Q That's what I asked you about.

A There is more to the phrase. I want my answer to be precise.

Q Who told you that the terms require a recognition of that union of all unlicensed employees aboard its vessel?

A Nobody told me.

Q What is the basis of that?

A A perusal of the SIU contract at that time, my perusal, and my knowledge of the Robin Line dispute, also.

THE COURT: What was that?

THE WITNESS: That was, as I recall it, Robin Line had a contract with the Seafarers International Union and sold its vessels to Moore McCormack which then had a contract with the National Maritime Union. The Seafarers International Union contended it had a right to keep its recognition of the unlicensed personnel, aboard the vessel, and the NMU claimed that it was entitled to the jurisdiction over those unlicensed seamen.

THE COURT: What happened?

THE WITNESS: It was ultimately resolved by the National Labor Relations Board. I don't remember precisely what happened. I don't remember the details.

THE COURT: What did you learn from that?

THE WITNESS: That each union wanted to retain jurisdiction over the crews aboard the vessels that were under contract.

THE COURT: You would derive that from that, that if a vessel was sold to Vantage who had a contract with SIU. They would claim they had a right to man that vessel?

THE WITNESS: Yes.

Q You knew that on January 11, 1971, did you not?

A Yes.

MR. BERGEN: Please mark this.

xxx (Commerce Exhibit 31, marked for identification.)

Q I show you Commerce Exhibit 31 for identification. I ask you if you can identify that document.

A Can I identify it from personal knowledge or do I know what it purports to be?

Q Can you identify the document?

A I still don't understand the question.

THE COURT: Do whatever you can.

A This document bears index numbers 71 Civil 582. It is an undertaking and it is signed by the president of Vantage Steamship Corporation.

THE COURT: What is the date, if any?

MR. BERGEN: 22nd day of February, 1971.

Mr. Sovel, will you stipulate that this was the

undertaking that was going to be used in the proceeding before Judge Wyatt, or a copy of that undertaking? It was filed.

MR. SOVEL: I would say the document on record is the one I would stipulate to but I don't think it makes any difference offhand.

THE COURT: It is going to be used to satisfy Judge Wyatt's conditions.

MR. BERGEN: Yes, your Hohor.

THE COURT: All right.

xxx (Commerce Exhibit 31, received in evidence.)

Q Mr. Phillips, you knew at the time of the proceedings before Judge Wyatt and Judge Frankel that Vantage had a lawful obligation with the SIU to have SIU people on its vessels?

A I don't understand that question in terms of "lawful obligation."

Q Didn't you know at the time of the proceeding before Judge Wyatt and the proceedings before Judge Frankel, that the SIU and Vantage had a collective bargaining agreement which required Vantage to have SIU unlicensed seamen on its vessels?

A Yes.

Q Isn't it also true that even if Commerce had given

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NATIONAL MARITIME UNION OF AMERICA, et al.

v. 71 Civ. 582
72 Civ. 4619

COMMERCE TANKERS CORP.

January 15, 1975
10:40 a.m.

- - -

THE COURT: As I understand it Mr. Lamy is here. Are you here with an attorney?

MR. LAMY: Yes, your Honor.

MR. GLANSTEIN: I am Mr. Glanstein, counsel for MEBA.

THE COURT: The problem that came up yesterday and I am sure Mr. Markowitz told you is that it was represented to me that there was an attempt to serve a subpoena last Friday on Mr. Calhoun and the people who went to serve Mr. Calhoun were told Mr. Calhoun was not available.

Then we had some confusion because there was another subpoena addressed to Mr. Calhoun or someone else at the union. The party who is serving these subpoenas, namely Commerce Tankers, states that they indeed need the testimony of Mr. Calhoun. As the issues have developed here I cannot reach any other conclusion that they are acting in perfectly good faith and that they indeed need the testimony of Mr. Calhoun.

next week.

MR. COHEN: We will do that.

THE COURT: If Mr. Wall is not needed I will see what can be done working around with Mr. Spector.

MR. COHEN: I will speak to you.

THE COURT : Next witness.

MR. COHEN: I called Edward Silver.

E D W A R D S I L V E R, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. COHEN:

Q What is your profession?

A I am an attorney.

Q Are you affiliated with a firm?

A I am a member of the firm of Proskauer Rose Goetz & Mendelshohn.

Q How many years have you been so associated?

A I have been with the office since 1948 and have been a member of the firm since 1957.

Q Are you familiar with the Tanker Service Committee?

A I am.

Q Is it one of your clients?

A It is.

Q Are you familiar with the Maritime Service Committee?

A I am.

Q Is it another one of your clients?

A It is.

Q Do you have a particular field of expertise Mr. Silver in the law?

A I specialize in the field of labor relations.

Q How long have the Maritime Service and the Tanker Service Committees been your clients?

A I have been representing the Tanker Service Committee as general labor counsel since approximately 1961. I have performed that service on behalf of Maritime Service Committee since on or about 1965 or 1966.

Q Was there a predecessor organization to the Maritime Service Committee?

A Yes.

Q What was that?

A The American Merchant Marine Institute.

THE COURT: Predecessor to what?

THE WITNESS: American Merchant Marine.

Q Were you counsel to that organization as well?

A I was a labor advisor to that organization, not performing the same function I now perform for it.

* * *

about all.

Q What is the Maritime Service Committee and the Tanker Service Committee?

A They are associations consisting of certain companies who band together for purpose of negotiating and administering labor agreements.

Q Are these companies in the same business?

A Yes.

Q What is that business?

A Transporting cargo of one kind or another.

Q Do you know the difference between a U.S. flag vessel and foreign flag vessels?

A Yes. I believe so.

Q Is it your understanding that U.S. Flag vessels have certain privileges with respect to the transportation of cargo between the U.S. ports?

A I believe there are such privileges for certain of those companies, yes.

Q Without limiting it to any companies, isn't it within your understanding that the transportation of cargo between U.S. ports is limited to vessels owned and operated by U.S. citizens?

A My only understanding is, I think, of what you're saying, is that with respect to the transportation of oil and

petroleum products between U.S. ports that that has to be carried on U.S. flag vessels. I frankly don't know if that's true with cargo vessels.

THE COURT: Strictly intercoastal trade is limited to U.S. flag.

THE WITNESS: That may well be, your Honor.

Q The members of the Maritime Service Committee are they operators of only U.S. flag vessels?

A That's correct.

Q Are the members of Tanker Service Committee operators of only U.S. flag vessels?

A I believe in that committee there are comapnies that have foreign flag vessels.

Q Just for the edification of the Court, tell us who are the principal members or who are the members of the two committees?

A Maritime Service Committee consists of U.S. Lines, Lykes Brothers, Moore McCormack Lines, Prudential Grace, Marine Transport Lines, Farrell Lines. I think that's it.

Q And Tanker Service Committee?

A I'm not going to be able to give you all the members, but I will give the principal members.

THE COURT: Have you given me all the members --

THE WITNESS: Of MSC.

THE COURT: Are you saying that some of those companies have some foreign flag vessels?

THE WITNESS: No. MSC has no foreign flag vessels.

THE COURT: It was only the Tanker Service Committee?

THE WITNESS: That's right.

THE COURT: The companies in the TSC?

THE WITNESS: Texaco, Gulf, American Oil, Keystone Shipping, Trinidad, Marine Transport Lines -- they have both tankers and dry cargo ships -- there are some smaller companies in that organization but I don't recall their names.

Q Are there companies --

THE COURT: Is it true that some of those companies have some foreign flags?

THE WITNESS: That's correct.

Q Are there tanker companies, companies engaged in the operation of tankers, with U.S. flags that are not members of the Tanker Service Committee?

A Are there other tankers? Yes.

Q Some of those --- do some of those other companies employ unlicensed seamen represented for collective bargaining purposes by the National Maritime Union?

A Are there other tanker companies that are not--

Q Not members of the TSC whose unlicensed seamen are represented by the NMU?

A I am not sure of that.

THE COURT: You are asking if there are some U.S. Flag tanker companies whose seamen are represented by the NMU who are not members of the TSC.

THE WITNESS: I understand that to be the question and I don't know the answer to that.

THE COURT: Isn't Commerce one of those?

MR. COHEN: Yes, sir.

THE WITNESS: Yes, that's correct.

Q Going back to 1969, weren't there several independents?

A That's right.

Q Non-members of the Tanker Service Committee?

A That's correct.

Q Have some of those independents since gone out of the business?

A I would not know that.

Q Do you sign the collective bargaining agreements that the MSC makes with any employee organizations on behalf of the MSC or its members?

A I do.

Q Is that true as to the TSC also?

A That's correct.

I ought to explain to Mr. Cohen, I believe the procedure is as follows:

When we agree initially on a contract I will sign the memorandum on behalf of the organization and the affiliated companies. Subsequently my understanding is more formal documents are prepared and sent to the individual companies for their signature.

Q Just for edification:

Is your signature on the original memorandum a binding commitment on behalf of your client?

A Yes, it is.

THE COURT: Whom do you consider your clients to be? The members of the TSC?

THE WITNESS: The organization is the client, but it is on behalf of the companies who are its constituent members.

THE COURT: You don't consier your signing on behalf of the independents?

THE WITNESS: No. They are not my clients.

Q I show you an agreement which has been marked in evidence in this case, Exhibit 13. It is a blue book. Have you ever seen this before?

A Yes, I have.

Q Did you ever sign a copy of the blue book?

A I don't believe so.

Q Do you know whether any of your constituents, the members of the Tanker Service Committee, have executed the blue book?

A I don't know whether they have signed the blue book, no.

Q Directing your attention now to Article I, Section 2 of the blue book, are you familiar with that section?

A Yes, I am.

Q Did you ever sign a memorandum of understanding with the National Maritime Union on behalf of either the MSC or TSC incorporating the provisions of Article I, Section 2?

A Not myself, no.

Q Did anyone else?

A It could be that my partner, Mr. Oppenheimer did.

MR. COHEN: I have never seen any such document, Mr. Sovel. I request you produce it.

Q Article I, Section 2 is called the sale and transfer clause or the restrain on transfer clause.

A Called the sale on transfer clause.

MR. SOVEL: If your Honor please, in response to

Mr. Cohen's last statement I am advised we have no such document.

THE COURT: Does that mean there was no such document signed?

MR. SOVEL: It does not mean that. It means when the blue book was printed up the underlying documents were destroyed.

MR. COHEN: I object to that.

THE COURT: You don't have anything in the memos of understanding?

MR. SOVEL: I am only answering a question that was directed to me.

THE COURT: It is a matter of record.

MR. SOVEL: The documents, as I understand it, they drafted after the blue book was printed up Mr. Oppenheimer, Mr. Phillips, there was a proofreading session and when they were done the blue book came into effect and the memos which were the initial documents which they had were discarded.

We do not have them. Maybe Mr. Oppenheimer does. I don't.

THE COURT: Let's go ahead. Develop the evidence.

MR. SOVEL: Excuse me. As I understand, they were kept over a year and we do not have them now.

THE COURT: You develop the evidence.

MR. COHEN: I must say on the record that I would object to any use of the representations that are being made now as evidence in this case and I believe --

THE COURT: Unless something is stipulated, I won't accept it.

MR. COHEN: Thank you.

THE COURT: I think we do have a concession which is binding on the union, that they have no copies of any such memo.

MR. SOVEL: At this time.

Excuse me. One minute. I want to check with the people who may have more direct knowledge of this than I do.

THE COURT: All right.

(Pause.)

MR. SOVEL: If your Honor please, Mr. Spector wants to try to give you a final, complete, binding answer on that. He wants to check certain files he may have in his office to report back on that to see if there is any additional documents that might relate to this.

THE COURT: I cannot believe that the union does not know categorically whether or not there was a memorandum of understanding executed covering Article I, Section 2.

You find that out and find out if it ever existed or if it still exists. You will report to us.

MR. SOVEL: We will give you a firm answer on that.

THE COURT: Proceed, Mr. Cohen.

Q Do you know when the blue book came into effect, Mr. Silver?

A I would assume the earliest it could have come into effect would have been 1970.

Q There has been prior testimony that the blue book was established in February of 1970. Would that be in accord with your recollection?

A It would have had to have been after the negotiations were completed on all the fringe issues which were not completed until the fall of 1969, the winter of 1969.

THE COURT: I'm not sure I understand.

Does the blue book encompass the entire agreement between the parties that it was supposed to be between, or was it just part of the agreements?

THE WITNESS: I think I might explain that, your Honor.

The 1969 negotiations consisted, I might say, of two separate subject matters:

Basic negotiations initially concerned what we called economic items. There was an agreement with respect to those items on or about June of 1969 and my recollection

is that a memorandum of understanding was signed indicating those economic items that were agreed upon.

There was left open for further negotiations so called non-economic items, working conditions, things of that kind, and I might add parenthetically the fact that they are called non-economic items does not necessarily mean that they don't have some impact on the cost. It is a traditional name given to those things normally by the union to cut back on what they consider the total cost of the package.

Those negotiations began after the signing of the intitial memorandum and continue for many, many months after June of 1969, and I believe continued right into December of 1969.

What happened then was my partner, Mr. Oppenheimer, was representing me at those discussions on behalf of both TSC and MSC with respect to those so called non-economic items and my understanding is that when they discussed each of those items with the union and came to an agreement they so figured we have an agreement on this particular item and that was put aside.

Ultimately, they came to a total agreement and subsequent to that all of the agreements including the original memorandum of understanding and all of the items encompassed

in it, so economic items were compressed into this blue book and that becomes the final full contract between the parties.

THE COURT: So the blue book is the so called non-economic items.

THE WITNESS: Plus every economic item. It is the book that represents every part of the agreement between the union and the companies.

THE COURT: Now, the blue book is just the agreement between the companies and the NMU.

THE WITNESS: Correct.

THE COURT: Were you also negotiating at this same time with other unions?

THE WITNESS: When you say at the same time, we were negotiating prior to June of 1969 and through June of '69 with other unions, yes.

THE COURT: The negotiations from June to December that you mentioned, were they just with the NMU?

THE WITNESS: My recollection is that we are talking solely about the NMU. Whether or not there were any other meetings with other unions with respect to certain items, I don't have a precise recollection. These meetings primarily were with the NMU.

I ought to clarify the record. I believe the blue book is the agreements between Tankers and NMU. There

would be another book representing the agreement betwen MSC and NMU.

THE COURT: This blue book is the whole agreement between the TSC and the NMU?

THE WITNESS: Correct.

Q Limiting myself for a moment strictly to the provisions of Article I, Section 2, the sale and transfer clause, was the 1969 agreement the first time any such clause had appeared in any NMU collective bargaining agreement to which any of your clients were party?

A I believe so.

Q This was a new thing for the NMU in 1969?

A Correct.

Q Prior to 1969, had the TSC or the MSC or any of its constituent members agreed to substantially the same provision with any other employee organization?

A I believe that in 1968 the MSC on behalf of its constituent companies, entered into a memorandum of understanding with the Marine Engineers Beneficial Association containing substantially the same clause.

Q I show you a two-page memorandum of understanding dated May 31, 1968, between National MEBA and the undersigned companies, Commerce 32, for identication.

(Commerce Exhibit 32, marked for identification.)

xxx

THE COURT: We will take a short recess.

(Recess taken.)

MR. COHEN: This is a two-page memorandum of understanding between National MEBA and the undersigned companies.

THE COURT: When is that dated?

MR. COHEN: May 31, 1968.

Q I show you this document and ask you whether you have ever seen it before?

A This is my signature on the document.

Q Does Commerce 32 for identification represent the original sale and transfer clause agreement between the MSC companies and MEBA?

A I believe it does.

MR. COHEN: I offer it, your Honor.

MR. SOVEL: No objection.

THE COURT: It will be received.

xxx (Commerce Exhibit 32 received in evidence.)

Q Did you participate in the negotiations leading up to the execution of 32?

A Yes, I did.

Q With whom did you participate in those negotiations?

A With the counsel for National Marine Engineers Beneficial Association. I believe at times it was with the

president of the association and with members of my committee.

Q Would you identify the president and counsel of MEBA to whom you have referred?

A President of MEBA is Mr. Jesse Calhoun. He was then and is now, and the general counsel of MEBA was Lee Pressman.

Q Is Mr. Pressman now deceased?

A Yes, he is.

Q In May of 1968 were there collective bargaining agreements with MEBA respecting any other to ics if you can recall?

A Not in May of 1968 that I can recall.

Q Was this a time in which a MEBA agreement expired?

A No.

Q In other words in May of 1968 there was an agreement in force and it extended beyond 1968?

A That's correct.

Q So this was a mid-term modification?

A Correct. I will not say modification, but I would say an addition.

Q Did you have many discussions concerning the sale and transfer clause, just limiting ourselves now, to the people from MEBA?

A There were several. I don't know how many there

were.

Q To the best of your ability to recollect, about how much prior to May 31, 1968 was the first such discussion?

A The first discussion with respect to this either took place, to my recollection, early in 1968 or could have been the latter part of '67 between Lee Pressman and one of the principals of the MSC companies with respect to this matter.

Q Who was that person?

A I believe it was Mr. Lee White.

Q Who was he affiliated with?

A He was an attorney in a law firm in New York but also was president of Marine Transport Lines.

Q Is Mr. White alive?

A He is not.

Q How did you learn of the discussions between Mr. Pressman and Mr. White?

A Well, I was present at the discussion.

Q I didn't understand that. I'm sorry.

To the best of your recollection, what transpired at that discussion?

A My recollection was I was asked to attened a luncheon or a meeting at Mr. White's office -- I'm not sure of it -- with he and Mr. Pressman, in which certain industry

problems were being discussed, and my recollection is that among the things that we discussed was this particular request by the MEBA.

My recollection is that they said they wanted to in a sense -- they insisted upon retaining jurisdiction and preserving jobs for its members before any ship was sold or transferred to an American flag company.

Q Did the MEBA put that exclusion, to an American flag company, in their request?

A My recollection is that there were prior provisions in the contract with respect to sales to foreign flag companies outside of the U.S. flag jurisdiction at which time severence pay had to be paid.

I think it was clear from the beginning that this only applied to a sale to another American flag vessel.

Q If we digress for a moment, is your practice in the labor relations area limited to the maritime industry?

A No.

Q Is it true that in a normal case outside of the maritime industry when a business is transferred the union representational rights continue?

A I can't give you a generalization on that. Sometimes they do and sometimes they don't.

Q Do you know the successor ship doctrine? Do those

words have any meaning to you?

A They do.

Q What is the general accepted meaning of those words?

A If a business is sold and the new owner operates the business generally in the same way as it had been operated before with substantially the same employees, the union recognition clause continues.

Q As of 1969, to the best of your understanding of the law, the maritime industry did the successorship doctrine apply in the maritime industry?

A As far as I recall at the time there were some labor board -- there was a specific labor board case dealing with this subject. I believe it involved Moore McCormack and a subsidiary company in which the question of who represented certain ships of that company was at issue.

Q Is that the Robin Lines case? The Moore McCormack case?

A Yes.

Q That case established what was commonly referred to in the industry as the fleetwide principle.

A I thought just the contrary, that the case said that with repsect to the issue before the board that they were going to permit separate elections before each vessel

of Robin Lines and not of a fleetwide unit in that case. That's my recollection of the decision.

Q Was your firm involved in that case?

A No.

Q To the best of your understanding as of 1969 hadn't the NLRB expressed its preference for fleetwide units in the maritime industry as respects unlicensed seamen?

A My recollection is that in the Robin Line case the board stated that it preferred or indicated that it was best that there be fleetwide units although it was creating an exception in that particular situation. It's been a long time since I have seen the decision.

Q In connection with the execution of Exhibit 32 in evidence, hadn't the question of the conflict between the fleetwide principle and the idea of the contract following the vessel been brought to your attention?

MR. SOVEL: If your Honor please, I will object to the question as phrased. It is assuming there is a conflict. Beyond that he is an attorney and I think he can answer that.

THE COURT: Really, the initial question is: Did you regard it as a conflict?

Rephrase the question.

Q If an MEBA vessel, prior to May 31, 1968, was sold to another party, another operator of the U.S. flag vessels, which had a pre-existing agreement on the rest of its already owned vessels with BMO covering engineers, what would have occurred with respect to who would represent the engineers on the buyer's vessel after the transaction?

A I have no idea.

Q Did you have any idea in May of 1968?

a It never came up.

Q Wasn't that the whole basis for the request, Mr. Silver, that Mr. Pressman was making at the time that we want to stop losing vessels to other collective bargaining organiziations?

A I don't recall him saying that. What he said was he wanted to make sure that in the future if a vessel was transferred that his organization would continue to represent the engineers on board that vessel.

Q Prior to May of 1968 had they not continued to represent the engineers?

A I don't know.

Q You know of no instance in which that occurred?

A I know of no instance either way. I don't recall an example.

THE COURT: You are saying that Mr. Pressman

wanted to make sure that if the problem came up this would be the result as per the agreement, right?

THE WITNESS: That's correct.

THE COURT: I don't understand something. This is probably getting ahead of the story.

Can I see Exhibit 32?

MR.COHEN: Yes, your Honor.

(Pause.)

THE COURT: May I see the blue book?

(Pause.)

I am getting into your territory but just in case. In these discussions with Mr. Pressman and Mr. Calhoun, did you have in mind the fact that there might be some prospective buyer who had agreements with the rival organization namely the BMO?

THE WITNESS: No, your Honor.

THE COURT: What was the problem you were even worried about then?

THE WITNESS: I was not worried about any problem. Mr. Pressman was.

THE COURT: According to the discussion, did he express what he was worried about?

THE WITNESS: Yes. He said that he wanted to assure for the union the proposition that in the event in the

future the company sold a ship to an employer, that did not have a contract with his organization, that the contract would have to go with the ship or the sale would not be made.

THE COURT: If there was a prospective sale the company that had a contract with another organization, would there be any way that that company could comply with this agreement?

THE WITNESS: Which company? The purchasing company?

THE COURT: Right.

THE WITNESS: As I recall the phrasing of the agreement, the obligation was upon the selling company to assure itself in the contract of sale that the purchasing company would have to take along the contract as part of its arrangement with that company.

My understanding, I believe it was, if it couldn't assure itself of that fact that the sale would not be made.

THE COURT: The way it would work out, you posed it in an either/or thing, and I want to say this:

If the prospective buyer had a contract with a rival organization, there would not realistically be any way they could buy and give the undertaking, could there?

THE WITNESS: It depends on what their contractual commitment was to that organization with whom it had a

contract.

THE COURT: What would be the types of contracts that would or would not permit this kind of thing?

THE WITNESS: You've got me guessing now but suppose the contract merely gave that union jurisdiction over existing vessels. Then it would not cover an acquired vessel. It might not cover that and they could make an arrangement with that union to take over a vessel with a different union.

THE COURT: Did some of the unions have contracts which were covering acquired vessels?

THE WITNESS: I don't understand.

THE COURT: I take it that some of the maritime unions had contracts with companies which provided that even later acquired vessels would have to be covered?

THE WITNESS: That's true.

THE COURT: And if they had that kind of contract they cannot comply --

THE WITNESS: It would present a real problem.

THE COURT: They could not make the sale.

THE WITNESS: The cannot make the sale to such a company if they could not get an undertaking from that company that it was going to continue to recognize the MEBA, that's correct.

THE COURT: Was there any discussion in these talks with Mr. Pressman and Mr. Calhoun about the possibility of sales being prevented because of this problem?

THE WITNESS: I think it was an acknowledged fact that this clause was going to make it more difficult for a company to sell a ship.

Your Honor, may I add something?

THE COURT: What is that?

THE WITNESS: We are assuming here that every sale would necessarily have to be made to a company that had a contract with another labor organization, the rival labor organization. There may be sales to companies that did not have a labor organization or had an independent union with whom it could deal on a much more flexible basis in which case the contract would follow the ship.

THE COURT: I understand.

BY MR. COHEN:

Q In any event, in May of 1968 you on behalf of your clients, agreed to the memorandum of understanding which effectively precluded the sale of their vessels to a certain number of companies, is that not correct?

MR. SOVEL: Objection. It speaks for itself.

THE COURT: He has already said.

Q What consideration did your clients receive in

exchange for the commitment it made in the May 31st memorandum of understanding?

A Continuity of their ships sailing.

Q Was an actual threat of strike made?

A No. I don't recall such a thing but I must tell you there were other subjects discussed during the period between 1965 and 1969 in addition to this sale and transfer clause. There were discussions with respect to sailing aboard those, aboard the ship that were modified.

My recollection is that we had some discussions with respect to definition of power tonnage under the contract which classifies ships or wage purposes. There were a number of discussions with respect to other items than this one.

Q Was it your understanding in May 31, 1968, that the sale and transfer clause in the MEBA agreement applied to non-members of the MSC?

A No discussion of that whatsoever.

THE COURT: Exhibit 32 was just between the MEBA and the MSC?

THE WITNESS: Correct.

Q Was there any discussion as to whether the agreement contained within Exhibit 32 would be requested of the members of the TSC?

A My recollection was that there was no discussion

with respect to that.

(Commerce Exhibit 33 marked for identification.)

xxx

Q I show you a one-page memorandum from Mr. Eugene O'Connor to the members of the Tanker Service Committee showing a carbon copy to you and transmitting a three-page memorandum of understanding dated June 21, 1968 with one page annexted.

I ask you if you have ever seen these documents before.

A There is my signature on this document so I assume I saw it.

Q Is this the kind of midterm agreement with MEBA that you referred to in your testimony just a while ago?

A No. Not really.

Q Is this something more than that, other than that?

A My recollection, based upon reading this document now, is that this resulted from a so called Most Favored Nations clause that the MEBA had in its 1965 contract that if another union received anything more percentage-wise than it received during that period, that it would be entitled to the same credits.

My recollection is now that as a result of an arbitration award involving the Masters, Mates & Pilots the

MEBA said that its Most Favored Nations clause was now coming into effect and sought arbitration of its Most Favored Nations clause and as a result of an arbitration award they were given certain additional benefits and those benefits, I believe, are incorporated in this memorandum of understanding.

MR. COHEN: I offer this exhibit, your Honor.

MR. SOVEL: No objection.

xxx (Commerce Exhibit 33, received in evidence.)

Q You referred a moment ago, Mr. Silver, to the Most Favored Nations clause. Mr. Barisic testified yesterday and referred to "me too" clauses. Are those one and the same?

A The way we have used those terms, yes, they are.

Q Directing your attention to 1969, do you remember a meeting at the Belmont Plaza Hotel involving all of the unions, so called start of 1969 negotiations?

A I believe so, yes.

Q Had there been any negotiations between the MSC and/or the TSC and the NMU prior to the meeting at Belmont Plaza?

A That was the so called kick-off meeting for the 1969 negotiations between all the unions and the maritime industry. Whether or not prior to that date I may have had some informal discussions with any representatives of the unions, I don't recall.

Q Do you have any recollection of discussing prior to the meeting at the Belmont Plaza with any representative of the NMU a sale and transfer type clause?

A No, I don't.

Q Do you have any recollection now of having discussed with any representative prior to the meeting at the Belmont Plaza an annual pension guarantee?

A Yes, I do.

Q With whom were those discussions held?

A With Mr. Curran, with Mr. Wall, and I believe Mr. Barisic being present. I believe Mr. Shapiro was present. He was then the administrator of the NMU pension and welfare plan. I believe Marty Hickey was present, he being an employee of the TSC and MSC primarily for pension and welfare purposes.

Q Who was Mr. Shapiro?

A Mr. Shapiro was the then administrator of the National Maritime Pension and Welfare plans. There may have been others at that meeting. Mr. Leigh, representing the Martin Siegel office, was present.

Q Martin Siegel is an actuarial firm?

A Yes.

THE COURT: And Hickey?

THE WITNESS: He is an employee of MSC and TSC

for pension and welfare purposes as well as for statistical work.

Q Was this one meeting?

A This was one meeting.

Q To the best of your recollection, what was discussed? Where was the meeting held?

A It was held at Boca Raton, Florida, at the Boca Raton Hotel.

Q What was discussed?

A I might say the purpose of the meeting was that Mr. Leigh wanted to report to representatives of the union and the industry in a preliminary way his latest actuarial reports on the pension plan, and I believe because Mr. Curran was in Florida, had a home, as a matter of fact, in Boca Raton , that it was arranged that that meeting was going to be held in Boca Raton. I was invited to attend.

Q Who requested the meeting?

A I believe Mr. Leigh requested the meeting initially.

Q What was the substance of Mr. Leigh's report to that meeting?

A Mr. Leigh reviewed generally his report with respect to the status of the pension plan, where it stood in terms of appropriate funding, and so forth. I believe

his concerns, or at least his report with respect to the facts, were decreasing man days in the industry, and that created a problem in so far as the pension plan was concerned.

THE COURT: Why did that create a problem?

THE WITNESS: Because the plan is paid for on the basis of man day contributions, a certain amount of money per man day, and if the man days decrease, the amount of money that would find itself into the pension plan would decrease.

Q What else transpired?

A I believe that after Mr. Lay finished with his report, either Mr. Curran or somebody else present -- I believe it was Mr. Curran -- said, "We are going to have to find a way of coming up with enough money to support the pension plan; we are going to have to look for some kind of formula; we are going to need a minimum amount of money in the plan to support the plan."

It was a statement on his part.

I think that was the substance of the meeting.

Q Did you respond to that statement?

A I don't recall whether I responded or not. It seems to me I would have had to acquiesce in the idea that moneys were going to have to be produced to support

the plan. I don't recall making any particular statement that would have agreed with anything he said at that time.

Q Was the question of industry stability, the economic condition of the employers, brought up at that meeting?

A Individual employers?

Q Either on an industrywide basis or limited to your clients.

A I think Mr. Curran was remarking about the fact that the industry was not in good shape, and I also believe that at that time the NMU, in particular, was very concerned about the elimination of the passenger ships; what that was going to mean in terms of its effect upon the pension plan.

Q Wasn't the problem early in 1969 the fact that there was a decreasing number of employee days to support an increasing number of retirees who would be entitled to the pensions under the plan and its assumptions as they then existed?

A I'm not sure I agree with you when you say that was the problem. The problem, if it could be called a problem, was how much money is it going to take to support the benefits that were then being paid or promised to

pensioners under the plan.

Q In the 1956 through 1968 period, is it accurate that employers contributed to the NMU pension fund on a per man per day contractually agreed amount basis?

A I think that's so.

Q Didn't Mr. Leigh report at the meeting at Boca Raton tnat approximately $44 million per annum would be required in order to fund the actuarial requirements of the NMU pension plan?

A I don't recall that figure being mentioned at that meeting.

Q Do you recall that figure subsequently coming up?

A I recall that figure being what turned out to be the guarantee contained in the 1969 NMU agreement.

Q Do you recall anything else about this meeting at Boca Raton?

A No, I don't.

Q Had there been any other meetings in Florida at or about the same time?

A Between who?

Q Involving the interests of your clients with or without your participation?

A Not that I know of.

Q Did your clients request that the NMU, MEBA, and MMP have meetings to insure industry stability?

A I'm not sure my clients requested such a meeting.

Q Do you recall learning that other companies had requested such a meeting at the union meeting?

A No. I did not.

Q Were your clients interested in obtaining assurances as of January, 1969, that in the event that the contract expiration date -- which was approximately June of 1969, is that right?

A Yes.

Q -- was reached without there being an agreement that the unions would pledge themselves not to strike?

A My recollection, Mr. Cohen, is that my clients would certainly have been receptive to such a commitment, but I also believe that the unions were just as concerned with that as were my clients, and especially the National Maritime Union.

Q You began that answer with a "Would have been." I don't want you to surmise.

Do you have any recollection that your clients expressed a desire of obtaining from the NMU and other employee organizations a no-strike pledge?

A I don't presently recall my clients, if this is the import of your question, requesting me to go to the unions to obtain such a pledge. I recall no such request.

Q By your answer you didn't mean to limit the possibility of them having asked to your knowledge anybody else to do that?

A I have no knowledge of that.

Q You have no knowledge they asked anybody to do that?

A That's correct.

Q To the best of your knowledge, what transpired at the meeting at the Belmont Plaza?

A Well, my recollection is that invitations were extended by the unions to companies with whom they had collected contracts which would have included TSC and MSC to attend a meeting at the Belmont Plaza to open up the 1969 negotiations, and I attended that meeting as well as many other people.

At that meeting I believe Mr. Curran was present and made a statement in which he declared -- th is is just my recollection, Mr. Cohen -- that he hoped that a contract could be negotiated which would provide stability to the industry, that there would be no stoppages, and so

forth and so on, and I believe each of the other union presidents or principals got up and concurred in the statement that was made by Mr. Curran.

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Q Were there any hard negotiations at this meeting?

A No.

Q Were a lot of people present?

A My recollection is that a large room was very much filled up with people.

Q It was more a convention atmosphere than a negotiation?

A I don't know what a "convention atmosphere" is. It was not a negotiation.

Q Was, to the best of your knowledge, the sale and transfer clause discussed?

A I don't believe any specific item was discussed.

THE COURT: I'm not c ear. You said something about invitations to companies.

THE WITNESS: I think what happened was letters went out from the unions to me on behalf of MSC and TSC and possibly to the companies individually saying that the union was calling a meeting at the Belmont Plaza on such and such a date, to open up the 1969 negotiations.

Q At the meeting at the Belmont Plaza was a time and place set for the next meeting with the National Maritime people, if you know?

A I think there was some discussion about how we were going to allocate our time to meet with the unions,

but I don't recall whether any specific date was set.

Q Did there come a time when you had the first substantive negotiations with the representatives of the National Maritime union?

A I am sure there did come such a time.

Q Were you present during those negotiations?

A I'm sure I was.

Q Were there many such meetings?

A There were a number of meetings prior to the agreements that resulted in the memoranda of understanding being signed with each of the unions, and then, as I testified earlier, there were many, many more meetings with the NMU with regard to those non-economic items.

Q Limiting myself to the NMU negotiations on the economic items, were there many such meetings?

A I don't know what you mean by "many." I would go along with you. There were meetings held with the NMU--I don't recall how many there were.

Q I show you a one-page memorandum dated July 17, 1969 from Mr. O'Connor to the members of the Tanker Service Committee, with a four-page memorandum of understanding attached, and two exhibits to the understanding attached.

MR. COHEN: I ask that this be marked as 34 for identification.

XXX

(Commerce Exhibit 34 marked for identification.)

Q (Continuing) Have you ever seen that document before?

A This is my signature, Mr. Cohen. I believe this is a copy of the memorandum that was executed in July of 1969.

Q This is the NMU extension agreement or memorandum of agreement extending the NMU collective bargaining agreement that you referred to previously?

A This is the memorandum of understanding which contains the agreement of the parties with respect to the so-called economic provisions of the contract, and to that extent it would modify the predecessor contract with respect to these items.

Q The date of this memorandum of Mr. O'Connor is July 17th, and it refers to the memorandum dated July 16th, although the date is not clear on the photocopy.

A Here it is (indicating).

Q Yes, it is clear. I'm sorry.

Directing myself from the period at the Belmont Plaza to July 16, 1969, did anybody from the MSC and TSC discuss the sale transfer clause with representatives of the NMU?

A Yes.

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Q Who had such discussions?

A I am piecing together those negotiations--one of the demands made by the union during that period. The union made clear it wanted the same kind of clause that had been signed with MEBA in 1968, and I don't recall how many times that was said or how many meetings that was discussed at, but it was part of their program for the 1969 contract.

MR. COHEN: I offer Exhibit 34.

THE COURT: Is there any objection?

MR. SOVEL: No objection, your Honor.

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(Commerce Exhibit 34 received in evidence.)

THE COURT: Isn't that the same as Commerce Exhibit 15?

MR. COHEN: It is the same except it does not have the O'Connor memorandum, and this is the one signed by the TSC.

MR. SOVEL: Signed by Mr. Silver for the TSC.

MR. COHEN: Yes.

BY MR. COHEN:

Q You don't recall how many times it was discussed? To the best of your knowledge, was it discussed many times, a few times, or perhaps not at all?

A No. I'm sure that in the course of our meetings with the union from the we began to meet leading to this

memorandum and your confining your question to this July 16th memorandum, the union had made it clear that they wanted and would get as far as they were concerned a sale and transfer clause substantially the same as that of the MEBA.

Q Who made that demand on behalf of the union in your presence?

A I must make an assumption now because I don't recall the exact words, but I am sure Mr. Curran as well as other representatives of the union, made that statement.

Q Who was present when Mr. Curran and other representatives of the union made such statements?

A I would have been present. Mr. Oppenheimer probably was present.

Q He is your partner?

A A partner of mine--and I believe representatives of the companies.

Q Are you referring to he member companies?

A As well as other companies. They held sessions during sessions we held with the NMU.

Q Prior to July 16th?

A Yes.

Q Were any independent companies that you know, that you can identify now, present at any time in which

the sale and transfer clause was discussed?

A There were independent companies present. I think I would have been present at discussions with respect to the sale and transfer clause. I cannot identify now when it was said and what time.

Q Were you authorized to represent the independents?

A I was not.

Q Did you ever indicate to the NMU in any way you were speaking for the independents?

A Never.

Q Did you try to make it clear you were speaking only for your clients, in clear words, to the NMU?

A I never had to do that. Everyone knew I was representing the TSC and MSC companies.

Q Do you recall whether any independent operator responded to the NMU demand for a sale and transfer-type clause?

A I don't have a recollection.

Q Did the NMU demand for a sale and transfer-type clause present a different problem or a problem of different dimensions than the MEBA sale and transfer clause?

A I don't think so, Mr. Cohen. When you say "different dimension," I'm not sure I understand what you mean.

Q Did you realize in the period of April to July

1969 that there had been certain NLRB decisions with respect to the unlicensed seamen and the accretion of vessels to fleets of United States flag operators?

MR. SOVEL: Objection, your Honor.

THE COURT: Sustained. That's way too vague.

Let me go back a point.

Did you say you don't recall the response of the company side to these demands of Mr. Curran?

THE WITNESS: No. I think the question was: Do I recall any independent company, a company I did not represent, responding to the union's demand for the sale and transfer clause? I believe that was the question.

I said I have no such recollection.

I responded on behalf of MST and TSC.

THE COURT: What was your response?

THE WITNESS: I said we would consider.

I have to add that having signed the agreement with MEBA in 1968 there was some kind of confession or contention in our own mind that we would not be able to prevent that clause from entering other agreements. It was unlikely we could have prevented that clause from entering other collective bargaining contracts having given it to one of the unions.

Q Had the TSC given the sale and transfer clause

to the MEBA at any time prior to 1969?

A They had not been requested to, and, therefore, had not.

Q Was there any basis for the difference in the treatment between MSC and TSC, as far as you could recall?

A I have no idea. My recollection is that the MEBA requested it only from the MSC in 1968.

Q Dry cargo operators, do they have certain subsidies from the Government?

A Some of them are subsidized companies, yes.

Q In about 1968 weren't the dry cargo companies, members of the MSC, highly dependent upon the subsidies for the profitability of their operation?

A I would have to say the companies that were subsidized were dependent upon those subsidies. I am not an expert in this area.

Q Did it make it unlikely that a dry cargo freighter or vessel in 1968 would be transferred foreign, to a foreign registry?

A My knowledge of that subject is subject to correction by those more expert, but I believe a subsidized company could not transfer a vessel foreign unless it got the approval of the Maritime Administration.

Q The approval of the Maritime Administration is

also required for the transfer of any United States flag vessel, isn't that true?

A If you tell me that I will accept it.

MR. SOVEL: I object to that.

THE WITNESS: I don't know.

Q Do you know what the phrase "tramp tanker" means?

A I think it means that you pick up jobs as you can; you pick up cargo as you can.

Q Weren't the non-members of the TSC largely operators of tramp tankers?

A I don't know that.

Q I direct your attention to page 3, the bottom thereof, paragraph 9, of Exhibit 34 in evidence. Is that the agreement that you referred to previously to continue negotiations with respect to the non-economic items?

A (Pause.) Yes. That's true.

Q In the period prior to July 17, 1969, had any other employee organizations demanded or requested of the MSC or the TSC, to your knowledge, that they be given sale and transfer-type clauses?

A Prior to July?

Q July, yes.

A I would have assumed that all the other organizations with whom we dealt had made a similar request.

Q I realize it is a long time ago. I am asking you for your best recollection. To your best recollection, did the MMP make a request for a sale and transfer-type clause?

A I don't have a present precise recollection. In this negotiation my recollection is that items of that kind became a demand by each of the unions, but I don't have an individual recollection of that at this time.

THE COURT: Maybe it is already in the record, but what unions are negotiating in this summer of 1969?

THE WITNESS: All of the labor contracts that MSC and TSC had with the labor organizations were expiring on June 15, 1969 and those organizations included the National Maritime Union, the Marine Engineers Beneficial Association, the Masters, Mates, and Pilots, the American Radio Association, the Radio Officers Union, the SOA which is the Staff Officers Association--I believe those are the organizations.

THE COURT: Those contracts all expired when?

THE WITNESS: June 15, 1969, were due to expire on June 15, 1969.

THE COURT: The BMO and the SIU were not--

A We had no dealings with those two organizations.

Q Mr. Silver, I show you an 11-page agreement dated July 1, 1969 entitled Tentative Memorandum of Under-

standing between the undersigned company and the International Organization of Masters, Mates, and Pilots. The agreement has a four-page exhibit attached to it. I direct your attention to the last page, page 11. Have you ever seen this agreement before?

A This is my signature on this agreement.

Q Does this represent the MMP 1969 agreement with your clients?

A It represents the agreement with respect to economic items in 1969. As you will note, I believe there is a provision in the last page, page 11, II, that the party shall continue to meet for the purpose of further negotiations, and the union retained the right by giving 24-hour notice to terminate the agreement and to strike.

Q I direct your attention now--

THE COURT: Has it been marked?

MR. COHEN: I ask that this be marked.

(Commerce Exhibit 35 marked for identification.)

THE COURT: Describe that briefly, for the record.

MR. COHEN: I believe I have, your Honor.

To make it clear, it is an 11-page tentative memorandum of understanding between the undersigned company and the International Organization of Masters, Mates

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and Pilots.

THE COURT: What is the date?

THE WITNESS: It is dated July 1, 1969, and the signing party, the employer party, is the Tanker Service Committee, Inc. by Edward Silver, counsel.

THE COURT: Thank you.

MR. SOVEL: I would also note that it lists on it various companies for whom Mr. Silver was signing, the names of the companies.

THE COURT: All right.

MR. SOVEL: I have no objection to this.

THE COURT: Are you offering it?

MR. COHEN: I am.

THE COURT: It will be received.

(Commerce Exhibit 35 received in evidence.)

XXX

Q Directing your attention, Mr. Silver, to clause M on page 9, is that the sale and transfer clause obtained by the MMP in 1969?

A It is the clause contained in this agreement. Whether there was any subsequent modification of this or expansion of this in the ensuing negotiations, I don't recall; but this is the sale and transfer clause pertaining to this agreement.

Q Did the MMP request of the Maritime Service

Committee in 1969 a clause similar to, or substantially similar to, the sale and transfer clause in this agreement?

A I believe so.

Q This clause has some handwritten notes on it, does it not?

A There is an insert.

Q Within the typewritten--

A Yes.

Q There are some initials on the side?

A Correct.

Q One of the initials is yours; is that correct?

A Correct.

Q What are the words that are inserted?

A After the word "transfer" on line 2 of the clause there is "(except sales to foreign flag)."

Q Do you recall whether or not there was any discussion as to the exclusion?

A I don't recall it, but there must have been.

Q Wasn't there a discussion along the lines of your clients asking for that exclusion?

A I would think it was only to make it clear we were only talking about sales to American flags, American flag companies. That was the only purport of that clause. They just wanted to make sure, as companies having foreign

flag operations, that this clause did not apply, but no one intended it to apply. There was no need for elaborate discussion of this.

Q Wouldn't vessels transferred to foreign flag operators be ineligible though to compete in the coastwise trade, as of your understanding, July, 1969?

A I understand that to be so.

Q Didn't your clients understand that at the time?

A They knew it better than I did, I assume.

Q Wasn't the basic position that you were taking with respect to the foreign flag exclusion on the sale and transfer that as far as my clients are concerned, as long as the vessel is ineligible to compete against us in this market, the United States coastwise market, we want the right to sell it there?

MR. SOVEL: Objection.

THE COURT: Sustained. I don't understand it. Try again.

Q Do you have any present recollection of anything you said at the time that you executed the exhibit, Exhibit 35 in evidence, to the MMP with respect to the foreign flag provision?

A Only to the extent we just wanted to make sure

that it had no application to transfer to foreign flags.

Q Do you have any recollection of what MMP said to you?

A I don't recall.

MR. COHEN: I ask that this be marked.

XXXX (Commerce Exhibit 36 marked for identification.)

MR. COHEN: We have marked 36 for identification, a one-page letter dated June 25, 1969 from the National Marine Engineers Beneficial Association signed by Mr. Calhoon, president, to Mr. Silver. There is a signature on behalf of Mr. Silver confirming the matters in the letter.

BY MR. COHEN:

Q Have you ever seen this before?

THE COURT: If it is anything signed by him you don't have to ask him if he has seen it before.

A It is my signature. I must have seen it and signed it.

MR. COHEN: I offer it.

THE COURT: Is there any objection?

MR. SOVEL: No objection.

THE COURT: It will be received.

XXX (Commerce Exhibit 36 received in evidence.)

Q Exhibit 36 relates to the sale and transfer

clause, does it not?

A Yes.

MR. SOVEL: If your Honor please, are we talking about the MEBA sale and transfer clause?

MR. COHEN: Correct.

Q Was there any discussion that you can recollect prior to the execution of the letter in June, 1969 with respect to that, to the substance of that letter?

A I have no recollection of any discussion with respect to that.

Q To the best of your understanding, did this represent any kind of modification of the MEBA clause?

A It did not.

Q It was a restatement of it?

A That's correct.

Q Had the basic MEBA negotiations been closed prior to the execution of this agreement?

A I don't recall the date of that, the execution of that.

Q During the course of the MEBA negotiations in 1969, had the MEBA demanded or requested or insisted upon a continuation of the sale and transfer-type of clause?

A With respect to MSC, my recollection is that they asked that the May, 1968 letter agreements with respect to the sale and transfer clause be incorporated into the MSC basic contract, and also demanded that such a clause be included in the TSC agreement.

Q Were such demands made of you personally or in your presence?

A It was part of the negotiations of the 1969 contract.

Q Were such demands ever made in writing by the MRBA, do your knowledge?

A I would have to look at the formal demands they made. I don't have a present recollection. I would assume they did.

Q Directing your attention to Paragraph 2, Paragraph 2 says the original and continuing purpose of said memorandum is to preserve the jobs and job rights of the companies' engineers covered by the collective bargaining agreement and to protect and maintain the wages, pension rights, and other economic benefits and working conditions provided to such engineers under said agree-

ment; is that correct?

A That's correct.

Q Do you have any recollection of having discussed the sale and transfer clause and the question of pension rights and pension funding together as one subject matter with the MEBA?

A Never.

Q Wasn't the original purpose and the original basis for the MEBA plan for sale and transfer-type clause a desire to assure themselves of adequate pension funding?

A If that was their intention they never communicated it as such to me.

THE COURT: Are you talking about "them" being the MEBA?

THE WITNESS: Yes.

Q Didn't the MEBA tell you in words or substance that the sale and transfer of vessels by MEBA contracted owners to other United States flag owners having contracts with other collective bargaining organizations was disrupting and putting at peril their pension rights and their pension funds?

A I recall no such statement by the engineers because, as a matter of fact, the same thing would have happened if the ship were transferred foreign and that

sale was permitted; I recall no such statement by the engineers.

MR. COHEN: By the way, I do want to make it a matter of record that the firm which Mr. Silver is a partner of, that firm has provided these documents from its files and from the files of its clients, TSC and MSC.

(Commerce Exhibit 37 was marked for identification.)

xx Q I show you a document which is a four-page document. The first two pages say "MEBA Proposals to Tanker Service Committee"; and the second two pages say, "Overall Settlement Dry Cargo and Tankers."

Do you have any recollection of ever having seen that document before? To the best of my knowledge it does not have your signature on it.

A I am sure I saw it. Whether it was in this form, four pages at the time, I don't know.

Q Is that document really two separate documents?

A I don't quite understand. One is entitled 'MEBA Proposals to Tanker Service Committee,' which is two pages, and then attached is a document that says, 'Overall Settlement Dry Cargo and Tankers.'

I think now what probably is is that the first two pages are items that are peculiar to the tanker group,

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and that the last two pages are common proposal to both tankers and dry cargo. That's my quick analysis of the document.

Q I ask you to direct your attention to the second two pages and tell me whether you have any recollection as to the material appearing thereon, whether they are proposals by the employee organizations or the employer organizations?

A It would not be employer proposals.

Q Is that correct? I ask you to take a look at Item B, No. 1.

MR. SOVEL: If your Honor please, I would think that the questioning of the witness on the document, it should first be offered and let me take a look at it.

THE COURT: Right.

(Pause.)

MR. COHEN: I offer it, your Honor.

MR. SOVEL: I have no objection.

(Commerce Exhibit 37 was received in evidence.)

xx Q Item 1 on the second page of the overall settlement --

MR. SOVEL: Page 4 of the document?

MR. COHEN: Correct.

Q (Continuing) It says, "Proposal submitted by MEBA to be accepted"; is that correct?

A That's correct.

Q Does this still indicate to you that this document was one which reflected employee organization demands rather than employer organization requests?

A This is unquestionably union demands.

Q What other document is there that reflects that to you?

A There is nothing here that an employer would request. These are all demands by the union for better provisions.

Q The document is saying overall settlement.

A You have to interpret that to mean it sought for overall settlement. This is union language and not mine.

I believe it does reflect the question you asked me a moment ago. You asked if it contained the sale and transfer tanker clause.

Q Is that the item immediately below Item 1 on page 4, No. 2?

A Correct.

Q In the 1969 negotiations, had there been some suggestion about modifying the manner in which

companies were required to contribute to the employee organization pension fund?

A Yes.

Q What was the suggestion that was made along those lines?

A The original suggestion came again from Mr. Pressman on behalf of the MEBA, and that suggestion came either early in 1969 or the latter part of 1968, again using Mr. White as a basis for calling the three of us together to discuss the idea that Mr. Pressman had for changing for the contribution basis to the pension plan.

Q What was Mr. Pressman's suggestion?

A Mr. Pressman requested of me, through Mr. White, and I met with both of them -- Mr. Pressman's position was that he had been looking for an alternative to a so-called benefit basis pension plan which the industry had raised grave objections to for the last several years.

I think for the Judge's edification --

THE COURT: He was looking for an alternative to what?

THE WITNESS: To a benefits basis pension plan.

Under a benefits basis plan the labor organization and the employer organization would contract for particular benefits, and that would become a contractual

obligation, and as part of that obligation the employers would agree to pay whatever an actuary said was necessary to support those benefits, and so that would be a flexible rate which would be changed on occasion when the actuary said that more money was needed to support those benefits.

There had been discussion of that kind of plan during the 1965 negotiations with MEBA and, as a matter of fact, my recollection was it was one of the reasons a long strike occurred between the dry cargo companies and the MEBA in 1965. The companies feared that such a commitment by contract would require their auditors or CPAs to include in their financial statements contingent liabilities of enormous amounts, since each company would be ledging itself to make the payments necessary to support the entire pension plan, and they were unwilling to do so for obvious reasons including that would severely restrict their ability to go to banks and raise money, and so they took a firm stand against such a plan.

What Pressman said was that he had come up with an alternative suggestion that he thought would be acceptable premised on the fact he believed that the union, or his union, or unions were going to have to have some assurance that their plan was being properly supported or funded, and he recognized the argument on the other

side, so he said he had a suggestion that there be a guarantee each year of the contract of sufficient amount of moneys that were necessary to support the benefits program during that year, but that would be a commitment, that would be a contractual commitment, solely for the duration ofthe contract and would provide a maximum liability during that period, and that was the first suggestion of the so-called guarantee that later was negotiated in the maritime industry.

Q Your best recollection was that this was some time late in 1968 or early 1969?

A That's my recollection, yes.

THE COURT: We will take our noon recess until 2.15.

MR. COHEN: I would like to ask two or three questions, your Honor.

THE COURT: Go ahead.

BY MR. COHEN:

Q Mr. Silver, did Mr. Pressman say he was asking for a company guarantee, a guarantee by each company?

A No. He was asking for an industry guarantee.

Q Industrywide?

A Yes.

Q Was any independent company, to your knowledge,

invited to that meeting?

A This was a -- I'm almost tempted to call it an off the record meeting between Mr. Pressman, Mr. White, and myself, he using Mr. White as a sounding board for the reaction that MSC would give to such a proposal. Mr. White was the president of one of the MSC companies.

Q Didn't you request Mr. Pressman to hold meetings with the other unions with respect to this topic?

A No.

MR. COHEN: Thank you, your Honor.

THE COURT: We will adjourn now until 2.15.

(Luncheon recess.)

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AFTERNOON SESSION

(2.20 p.m.)

E D W A R D S I L V E R , resumed.

DIRECT EXAMINATION (Continued)

BY MR. COHEN:

Q Did you ever hear anything in the 1969 negotiations with the NMU about a power tonnage formula for funding the NMU pension fund?

A I heard it prior to the 1969 negotiations.

Q From whom did you hear of such a formula?

A I believe at the meeting you asked me about this morning that took place In Boca Raton with Mr. Leigh from the Martin Siegel office. It was either Mr. Curran or somebody on the union side who said that maybe because a number of ships are disappearing and the new ships are going to be of a much larger size, that perhaps a new formula should be devised based upon power tonnage.

Q Did you respond to that?

A I said I believe if they were going to make such a suggestion we would have to look into it, but I had no feeling about it at the moment.

Q Have you ever discussed a power tonnage-typ formula for funding the NMU pension fund prior to the meeting at Boca Raton with anybody else?

A I have no recollection of doing so.

Q For purposes of the rest of the questions along this line, may we refer to this as the power tonnage formula?

A Fine.

Q After the meeting at Boca Raton, was there any further discussion of the power tonnage formula?

A With anyone?

Q With anyone.

A I have a recollection that some time after that discussion at Boca Raton either Lee Pressman or Jesse Calhoon mentioned to me that they heard that the NMU was thinking about a power tonnage formula, and they were not interested in such a formula at all.

Q Did you inquire as to why the MSC and TSC were not interested?

A No. It never got to the point where I had to inquire of my clients with respect to power tonnage because it never became a firm proposal.

Q I show you a copy of a letter dated October 30th, 1968, two pages, from Mr. Curran to yourself.

(Commerce Exhibit 38 was marked for identification.)

Q Do you recall receiving this at or about the

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time of the date thereof? I want to apologize. The copy is snipped a tiny bit at the edge. I hope it does not interfere with your reading.

A That's all right.

(Pause.)

I am sure I received the letter. It is addressed to me.

THE COURT: What is this?

THE WITNESS: It is a letter from --

THE COURT: It will help the record when you mark something for identification, simply give the date, and if it is a letter from so-and-so, who it is, and to whom it is being sent.

MR. COHEN: I identified it, your Honor, before.

A It is a letter dated October 30th, 1968 on the letterhead of the National Maritime Union of America and signed by Joseph Curran and addressed to me at Maritime Service Committee, 300 Park Avenue. I am sure I received this letter.

MR. COHEN: I offer it.

MR. SOVEL: No objection.

THE COURT: Incidentally, before I forget it, we did have a response from the lawyer for MEBA. Let's put that on the record.

What did he say?

MRS. MARCH: The MEBA lawyer, as instructed, called chambers and gave the address, the home address, for Mr. Calhoon, and was attempting to get the other information he had been instructed to get.

THE COURT: Can you give the home address?

MRS. MARCH: J. M. Calcoon, 2 Madison Place, Jericho, Long Island, New York.

THE COURT: Please proceed.

BY MR. COHEN:

Q Directing your attention to the second paragraph from the top on page 2 of the letter, is that an advancement of the power tonnage-type formula that we have been talking about?

A Well, it says in accordance with some index or measure (perhaps power tonnage) -- so he is indicating that's a possibility of a substitute arrangement.

Q He was suggesting that the employers contracted to the NMU contribute not on a per man per day basis but on another basis of some type of indices?

MR. SOVEL: Objection. The letter speaks for itself.

THE COURT: It is received in evidence.

(Commerce Exhibit 38 was received in

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evidence.)

THE COURT: Is the letter a suggestion of a possible formula other than a per man per day?

THE WITNESS: Yes.

Q Is it correct that the letter invites you to attempt to arrange a meeting?

A Yes.

Q Did such a meeting transpire?

A I don't believe so.

Q Do you know whether or not you responded to this letter?

A I don't believe so. I think perhaps what happened was the call for the Boca Raton meeting replaced any request for a meeting on this letter.

Q Am I correct in understanding that the proposal being advanced by this letter and that Boca Raton by Mr. Curran would have had those operators, NMU contracted operators, contribute more money to the NMU pension fund if they operated larger, more efficient, vessels?

MR. SOVEL: Objection.

(Record read.)

THE COURT: Overruled.

MR. SOVEL: Your Honor, there is no testimony that that proposal was advanced at Boca Raton. I think

it is a misleading question.

MR. COHEN: Maybe we can cure that.

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Q Was that the proposal being advanced by Mr. Curran at Boca Raton?

A That was not a proposal. He suggested it at that meeting, such as this letter suggests, that perhaps we were going to have to go to a different formula for funding the pension plan for paying for the benefits because the man-day contribution was not going to produce sufficient moneys.

Q One of the alternatives posed was power tonnage?

A I believe that's true.

Q In that context, would the power tonnage formula, if adopted by the MMU and its contracted employers, have had the effect of requiring those NMU contracted employees who operated larger, more efficient, vessels to contribute a greater amount to the NMU pension fund?

A I never saw any specific proposal, but I would assume that the potential of such a formula would be to have a rate varied depending upon the size of the vessel, and larger vessels would contribute larger amounts of money.

Q Was it explicitly said by Mr. Curran that the objective was to get those people who have a larger gross earning capacity to put in a larger amount of money?

A No. I never heard it expressed that way.

Q Did Mr. Curran indicate to you, in words or substance, at Boca Raton, that the objective was in order to assure the financial soundness of the MNU pension fund that those people who had vessels with a greater annual lift capacity be required to put in more money?

A I think I have already testified, Mr. Cohen, that my recollection of what was said at Boca Raton was that after Mr. Leigh had reviewed his report and stated that the man-days in the industry were decreasing therefore producing less moneys for the plan, Mr. Curran said that we were going to have to come up with some formula to provide sufficient moneys during the course of the next contract to pay for the NMU pension and welfare plan.

Q I show you a one-page memorandum from O'Connor to the members of the Tanker Service Committee, dated December 9, 1968, attaching and transmitting a copy of a three-page letter dated December 2, 1968, from Mr. Curran to yourself.

XXX (Commerce Exhibit 39 marked for identification.)

Q (Continuing) The top memorandum indicates a copy to you, but just as to the letter annexed to the memorandum, do you recall having received that?

A I'm sure I did.

Q Do you have any independent recollection of

having received or discussed the letter with anyone?

A The procedure would have been upon my receipt of such a letter I would send a copy to Mr. O'Connor for Tankers and Mr. Wenthen of MSC, and they, in turn, would send the communication to representatives of the various companies.

Q Directing your attention to number 5 in this letter, relating to pension contributions, read that,please. It goes over to the other page.

A (Pause.) Yes.

Q Did you have any discussion with Mr. Curran with respect to item 5 of his letter of December 6, 1968, at any time prior to the meeting at Boca Raton?

A I don't believe so.

Q Other than as you have already testified--

A Excuse me.

This letter, I believe, is dated subsequent to the meeting at Boca Raton.

MR. COHEN: Maybe I am incorrect.

Q Was the meeting in late 1968 or early 1969?

A I think it took place very early in the summer of 1968.

Q This would have been subsequent to the meeting?

A I think the meeting was just on or about this

this date. My recollection is that it took place within the first few days of December of 1968, and if that's so this letter would have been sent subsequent to that meeting.

Q If I can bother you to peruse the letter for a moment--

A Yes.

(Pause.)

THE COURT: Are we still on Exhibit 39?

THE WITNESS: Yes, your Honor.

THE COURT: Did you take Mr. Silver's deposition?

MR. COHEN: No, sir.

THE COURT: This is practically like a deposition. This is a teriffic waste of the Court's time. I thought you were all ready for trial. We have question after question, and you obviously don't know the answer to the question, and the question is frequently asking if certain things happened, and no they didn't.

If you had taken his deposition this would be cut in half or two-thirds.

MR. COHEN: I must express disappointment that the Court feels we are taxing its time.

I did interview Mr. Silver privately, and I am aware, and I do believe I am getting answers from him

which are the answers that I expected to get. I believe the examination is moving along at a fair and proper pace.

THE COURT: Considering that you have not taken his deposition.

THE WITNESS: I have read the letter.

Q Was there a discussion of any of those items of collective bargaining at the meeting at Boca Raton?

A Not to my recollection.

Q Was there a discussion between you and Mr. Curran, or any representatives of the NMU, of any of those items of collective bargaining after the date of December 6th and before the meeting at Belmont Plaza?

THE COURT: This is exactly the kind of thing you should have covered in a deposition and not at a trial. If this were a jury case you would not consider having prolonged examination of this kind, but because it is a non-jury case everybody feels they can drag it out to the nth degree. It is not being dragged out. I am not saying that, except that it is not the kind of testimony that is appropriate for a trial.

You should have taken this man's deposition. You should know what happened and be able to put him on the stand and present in prompt and quick order what is necessary, not just explore his knowledge for the first time

here.

If we are going to have more of this we will adjourn this trial. I put you on for a prompt trial. I accelerated this case more because everybody wanted a quick trial. I thought you were thoroughly prepared.

Perhaps we ought to adjourn the trial and permit you to take discovery.

MR. COHEN: I don't believe I need any more discovery.

THE COURT: To put on an important witness and--

MR. COHEN: Your Honor--

THE COURT: To put on an important witness--this man is a very critical witness--to put him on when you have not taken his deposition, I don't understand it.

I want to know who the rest of the witnesses are in this case, and I want to know whether they have been deposed. It is a waste of time to have discovery occur before me.

What other witnesses do you have, and have you deposed them? Have you deposed Mr. Spector?

MR. COHEN: Yes, your Honor.

THE COURT: We won't interrupt this. We will go forward as best we can, but by the end of today I would like to discuss with you, with your parties, their further

witnesses and whether they have completed discovery.

BY MR. COHEN:

Q The question is this: Did you discuss any of those items with Mr. Curran, or any representative of the NMU, between December 6, 1968 and the meeting at the Belmont Plaza?

A I don't recall any such meeting or discussion.

MR. COHEN: I ask that this be marked for identification as Commerce Exhibit 40.

This is a one-page memorandum from Mr. O'Connor to TSC companies having MEBA agreements, with a four-page memorandum and a separate two-page memorandum attached.

The date is April 7, 1968.

XXX (Commerce Exhibit 40 marked for identification.)

T2 B8 MR. COHEN: I offer Exhibit 39.

THE COURT: Is there any objection?

MR. SOVEL: No objection, your Honor.

THE COURT: It will be received.

XXX (Commerce Exhibit 39 received in evidence.)

BY MR. COHEN:

Q The memorandum of April 7th indicates that you are a signatory of a copy thereof; is that correct?

A That's correct.

Q Turn the page, please. Do you see a list of

people in attendance at the first MEBA negotiating meeting?

A Yes.

Q Do you recall when that meeting was held?

A It says April 7, 1969.

Q Do you have any independent recollection of the meeting?

A I do not.

Q Directing your attention to the first paragraph, "Pressman" is Mr. Lee Pressman, the former general counsel of the MEBA?

A Correct.

Q He expressed shock at this article, referring to a newspaper article, saying that two meetings in Miami were held in Miami at the requests of the companies which resulted in a statement by "three other unions," committing themselves to extend the contract beyond June 15th and meaning full negotiations were being held in good faith--that's the end of what I am reading.

Do you recall having received this memorandum?

A Which one?

Q The memorandum attached to the one-page memorandum of Mr. O'Connor.

A This document I have before me?

Q Yes. Have you ever seen that before?

A I don't recall it, but I must have received it as part of this communication from Mr. O'Connor.

Q Do you have any recollection of Mr. Pressman having said anything at the first MEBA meeting in April of 1968 about meetings in Miami?

A I don't have any independent recollection, but if this document says he did it, I would not deny it.

Q Is it correct that meetings were held in Miami at the request of the companies?

A It is not. As a matter of fact, I read this as confirming that. He is expressing shock that anybody would say that such meetings were held at the request of the companies.

Q Reading the first sentence, doesn't the newspaper article he is talking about say that the leading operators were convinced there would be a strike on June 15th?

MR. SOVEL: Objection, your Honor. I don't know what this is about, what with this kind of questioning on a document that the witness doesn't even recollect.

THE COURT: Sustained.

Q Do you recall anything about meetings in Miami that were held between the unions at the request of the companies in early 1969?

A I testified before I don't know of any request made by the companies for the unions to hold meetings in Miami.

MR. COHEN: I offer Exhibit 40.

MR. SOVEL: Objection. It is not authenticated properly.

THE COURT: He says he must have received it.

MR. SOVEL: Also, I might say that there is a question as to relevancy against a claim of NMU since it involves MEBA.

MR. COHEN: The meetings were held with the NMU, and I intend to show that through separate witnesses.

MR. SOVEL: The separate witness can identify the document.

MR. COHEN: This witness can identify this document which indicates the fact of those meetings and what transpired at them. Other witnesses who were present--

THE COURT: Are you interested in the April 7, 1967 meeting as such or are you just interested in the discussion here as some kind of proof of prior meetings in Miami at the companies' request?

MR. COHEN: The latter.

THE COURT: I will sustain the objection and you will have to prove that by some means other than what